2012

CUMULATIVE SUPPLEMENT

TO

MISSISSIPPI CODE

1972 ANNOTATED

Issued September, 2012

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2012 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2012 Regular Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2012 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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ANNOTATED

VOLUME TWO

TITLE 3

STATE SOVEREIGNTY, JURISDICTION AND HOLIDAYS

CHAPTER 3

State Boundaries, Holidays, and State Emblems

§ 3-3-7. Legal holidays.

(1) Except as otherwise provided in subsection (2) of this section, the following are declared to be legal holidays, viz: the first day of January (New Year's Day); the third Monday of January (Robert E. Lee's birthday and Dr. Martin Luther King, Jr.'s birthday); the third Monday of February (Washington's birthday); the last Monday of April (Confederate Memorial Day); the last Monday of May (National Memorial Day and Jefferson Davis' birthday); the fourth day of July (Independence Day); the first Monday of September (Labor Day); the eleventh day of November (Armistice or Veterans' Day); the day fixed by proclamation by the Governor of Mississippi as a day of Thanksgiving, which shall be fixed to correspond to the date proclaimed by the President of the United States (Thanksgiving Day); and the twenty-fifth day of December (Christmas Day). In the event any holiday hereinbefore declared legal shall fall on Sunday, then the next following day shall be a legal holiday.

(2) In lieu of any one (1) legal holiday provided for in subsection (1) of this section, with the exception of the third Monday in January (Robert E. Lee's and

Martin Luther King, Jr.'s birthday) and the eleventh day of November (Armistice or Veterans Day), the governing authorities of any municipality or county may declare, by order spread upon its minutes, Mardi Gras Day or any one (1) other day during the year, to be a legal holiday.

(3) August 16 is declared to be Elvis Aaron Presley Day in recognition and appreciation of Elvis Aaron Presley's many contributions, international recognition and the rich legacy left to us by Elvis Aaron Presley. This day shall be a day of recognition and observation and shall not be recognized as a legal holiday.

(4) May 8 is declared to be Hernando de Soto Day in recognition, observation and commemoration of Hernando de Soto, who led the first and most imposing expedition ever made by Europeans into the wilds of North America and the State of Mississippi, and in further recognition of the Spanish explorer's 187-day journey from the Tombigbee River basin on our state's eastern boundary, westward to the place of discovery of the Mississippi River on May 8, 1541. This day shall be a day of commemoration, recognition and observation of Hernando de Soto and European exploration and shall not be recognized as a legal holiday.

(5) Armistice Day (Veterans Day) shall be observed by appropriate exercises in all the public schools in the State of Mississippi. The superintendent of schools of each public school district is authorized to provide for the appearance of uniformed military personnel, uniformed veterans or the families of fallen military personnel/veterans at such public school exercises in honor of Armistice (Veterans) Day. The superintendent of schools is also authorized to permit the school band and its director(s) at any public school in the district to perform at Armistice (Veterans) Day exercises in the school district upon the request of public officials or veterans associations without loss of any program credit by participating students and without loss of leave by participating school personnel.

SOURCES: Codes, 1880, § 1132; 1892, § 3514; 1906, § 4011; Hemingway's 1917, § 2045; 1930, § 5024; 1942, § 5946; Laws, 1924, ch. 343; Laws, 1940, ch. 138; Laws, 1948, ch. 365; Laws, 1966, ch. 563, § 1; Laws, 1970, ch. 460, § 1; Laws, 1987, ch. 301; Laws, 1987, ch. 398; Laws, 1988, ch. 566; Laws, 1993, ch. 301, § 1; Laws, 1997, ch. 339, § 1; Laws, 2011, ch. 491, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment inserted "and the eleventh day of November (Armistice or Veterans Day)," preceding "the governing authorities of any municipality or county may declare, by order spread upon its minutes" in (2); and rewrote (5).

ATTORNEY GENERAL OPINIONS

It is the intent of this section that there be ten legal holidays per year, and a municipality does not have the authority to create eleven legal holidays in exercising its power under subsection (2). Bowman, July 18, 2003, A.G. Op. 03-0348.

A city may not designate individual employee birthdays as legal holidays. Alter-

natively, the municipality could adopt a "birthday leave" policy which may or may not accumulate, depending on the provisions of the policy adopted. Broewn, Nov. 11, 2004, A.G. Op. 04-0568.

Municipal governing authorities may not enlarge upon the number of legal holidays set forth in Section 3-3-7. Brooks, Feb. 3, 2006, A.G. Op. 06-0029.

§ 3-3-15.1. Display of POW/MIA flag.

(1) The Legislature enacts this section as the symbol of the nation's and the state's commitment to achieving the fullest possible accounting for Mississippians who have been or in the future may become prisoners of war, missing in action or otherwise unaccounted for as a result of hostile action.

(2) As used in this section, the term "POW/MIA Flag" means the National League of Families POW/MIA Flag recognized officially and designated by Section 2 of Public Law 101-355 (36 USCS Section 189).

(3) The Bureau of Capitol Facilities shall display the POW/MIA Flag in a prominent place at the New Capitol Building on the following days:

(a) Armed Forces Day, the third Saturday in May;

(b) Memorial Day, the last Monday in May;

(c) Flag Day, June 14;

(d) Independence Day, July 4;

(e) National POW/MIA Recognition Day; and

(f) Veterans Day, November 11.

(4) Such display shall serve as the symbol of the nation's and the state's concern and commitment to achieving the fullest possible accounting of Americans and Mississippians who, having been prisoners of war or missing in action, still remain unaccounted for.

(5) This section shall not be construed or applied so as to either require or prohibit the display of the POW/MIA Flag by any county, municipality or public school district in Mississippi.

SOURCES: Laws, 2006, ch. 519, § 1, eff from and after passage (approved Apr. 3, 2006.)

§ 3-3-20. State reptile.

The American Alligator (Alligator Mississippiensis) is hereby designated the State Reptile of Mississippi.

SOURCES: Laws, 2005, ch. 302, § 1, eff from and after July 1, 2005.

Editor's Note — The preamble to Laws 2005, ch. 302, reads as follows:

"WHEREAS, the American Alligator is found in the southeastern United States from Texas to Florida, and from South Carolina to the Gulf Coast. They are found in both natural and manmade freshwater lakes, ponds, rivers and wetland areas; and

"WHEREAS, the Mississippi Department of Wildlife, Fisheries and Parks estimates that there are 32,000-38,000 alligators and about 408,000 acres of alligator habitat in Mississippi. Alligator reports have come from as far north as Coahoma, Lafayette and Itawamba Counties, and as far south as the coastal counties of Jackson, Harrison and Hancock; and

"WHEREAS, alligators are important to the ecology of their habitat. During droughts, they dig holes, or dens, which provide water for the wildlife community. The alligators construct these 'gator holes' with their large sweeping tails that retain water during periods of drought. This provides water and foraging space for many other species, such as wading birds; and

"WHEREAS, alligators are unique in that, unlike other reptiles, female alligators will protect their young for up to two years after hatching. We feel this sets a good example for all animal parents. They have proven themselves to be highly resilient to both natural and induced mortality. In fact, they are known to have existed before the dinosaurs — more than 200 million years ago; and

"WHEREAS, alligators are one of the few animals that have been listed as endangered and rallied back again."

§ 3-3-43. State toy.

The Teddy Bear is designated the state toy of Mississippi, in recognition of the Mississippi connection to the origin of the Teddy Bear. The connection is that on November 14, 1902, during a hunting expedition led by distinguished Mississippian Holt Collier in Smedes, Mississippi, President Theodore Roosevelt refused to shoot a small, exhausted black bear. The shot not fired at a baby bear in the Mississippi Delta became a great credit to the heroic and sportsmanlike conduct of President Roosevelt, and because of the President's journey to Mississippi, the stuffed bear toy was appropriately named the "Teddy Bear," a positive symbol of love, comfort and joy for children of all ages.

SOURCES: Laws, 2002, ch. 466, § 1; Laws, 2003, ch. 361, § 1, eff from and after passage (approved Mar. 13, 2003.)

Amendment Notes — The 2003 amendment rewrote the section.

§ 3-3-45. State soil.

Natchez silt loam (coarse-silty, mixed, superactive, thermic, Typic Eutrudepts) is hereby designated as the official state soil of Mississippi.

SOURCES: Laws, 2003, ch. 360, § 1, eff from and after passage (approved Mar. 13, 2003.)

Editor's Note — The preamble to Laws, 2003, ch. 360 provides as follows:

"WHEREAS, it appears that each of a growing number of states of the United States, having significant concern for soil, have by legislative enactment chosen a particular soil as their official state soil; and

"WHEREAS, the State of Mississippi has significant concern for its soil resources; and

"WHEREAS, soils enhance the quality of surface and ground waters and serve as the foundation for our bountiful agriculture, our unique wildlife habitats, our beautiful landscapes and the homes and communities of our citizens; and

"WHEREAS, soils are essential to the quality of life and welfare of all Mississippians; and

"WHEREAS, Natchez silt loam (a coarse-silty, mixed, superactive, thermic, Typic Eutrudepts) covers a significant land area in Mississippi and is a highly productive agricultural soil; and

"WHEREAS, the State of Mississippi has yet to designate a state soil; NOW, THEREFORE,"

§ 3-3-47. State Automobile Museum.

The Tupelo Auto Museum, Inc., is designated as the state automobile museum.

SOURCES: Laws, 2003, ch. 362, § 1, eff from and after July 1, 2003.

§ 3-3-49. State Historical Industrial Museum.

The Mississippi Industrial Heritage Museum, Incorporated, is designated as the state historical industrial museum.

SOURCES: Laws, 2004, ch. 451, § 1, eff from and after July 1, 2004.

§ 3-3-51. "Nurses Month" designated.

The month of May of each year is designated as "Nurses Month" to promote and honor the hard work and dedication of nurses in the State of Mississippi.

SOURCES: Laws, 2006, ch. 301, § 1, eff from and after passage (approved Feb. 7, 2006.)

Editor's Note — The preamble to Laws of 2006 provides:

"WHEREAS, the month of May is designated "Nurses Month" in Mississippi in recognition of the hard work and dedication of nurses and their enormous contributions to improving the health care of Mississippi's citizens; and

"WHEREAS, it is the intent of the Mississippi Legislature in designating the month of May recognizing nurses, to acknowledge and celebrate the nurses of this state who work in hospitals, nursing homes, doctor's offices, schools, health care centers and even private homes; and

"WHEREAS, the contributions of the nursing profession to the improvements that have been made in health care are sometimes overlooked; and

"WHEREAS, the members of the Mississippi Legislature feel that is vitally important that a month be formally designated as "Nurses Month" for the purpose of increasing public awareness of the role nurses play in the health and well being of Mississippians and the health care system: NOW, THEREFORE,"

§ 3-3-53. "Mississippi Health Awareness Day" designated.

The third Thursday of January of each year is designated as Mississippi Health Awareness Day to promote health and disease prevention efforts throughout the State of Mississippi.

SOURCES: Laws, 2006, ch. 304, § 1, eff from and after passage (approved Feb. 14, 2006.)

Editor's Note — The preamble to Laws of 2006 provides:

"WHEREAS, the Community Organization for Health Awareness, Incorporated (COHA, Inc.), was established in 1994 to assist Mississippi communities with addressing the astounding statistics related to heart attack, stroke, cancer, teen pregnancy, teen alcohol and drug abuse, as well as other health-related matters; and

"WHEREAS, medical practitioners, social service and other personnel along with community residents volunteer their talent and resources in a collaborative effort to engage, educate and inform underserved communities with regard to the prevention of diseases that plague this population; and

"WHEREAS, since its inception, COHA, Inc., has had a tremendous impact on the lives of many residents through annual health fairs and numerous other community based initiatives, all at no cost to recipients; and

"WHEREAS, a continued improvement in the overall quality of life for many Mississippi citizens has been realized through the contributions of COHA, Inc., to humankind; and

"WHEREAS, it is most appropriate to designate one (1) day of each year to focus on improving the health of all Mississippians through disease prevention efforts: NOW, THEREFORE,"

§ 3-3-55. "Katrina Day of Remembrance" designated.

August 29 of each year is designated as "Katrina Day of Remembrance" in Mississippi in honor of the victims of this most destructive storm, to bring awareness of the destruction caused by hurricanes, and to call upon the citizens of Mississippi to join each other and the entire community that is linked by the Gulf of Mexico in a unified expression of faith and hope.

SOURCES: Laws, 2007, ch. 301, § 1, eff from and after July 1, 2007.

Editor's Note — The preamble to Laws of 2007, ch. 301 provides as follows:

"WHEREAS, on Monday, August 29, 2005, Hurricane Katrina, originally designated a Category Four Hurricane, crashed with unrelenting and violent force onto the entire Mississippi Gulf Coast, making landfall at or around Waveland, Mississippi. In one day, the worst natural disaster in our state's history struck us a grievous blow, leaving a 90-mile swath of destruction along the Mississippi Gulf Coast and causing severe damage throughout Central and North Mississippi; and

"WHEREAS, the Legislature of the State of Mississippi hereby recognizes that the events of August 29, 2005, and the days following, when Hurricane Katrina struck Mississippi a deadly blow and so many in Mississippi lost their lives, are among the most historic in the entire history of Mississippi; and

"WHEREAS, the Legislature further recognizes that it is appropriate for the State of Mississippi to commemorate this tragic event and to memorialize the hundreds of citizens who lost their lives; NOW, THEREFORE,"

§ 3-3-57. State military history museum.

The Mississippi Military Department's Armed Forces Museum is hereby designated as Mississippi's official state military history museum.

The museum will henceforth be named "Mississippi Armed Forces Museum."

SOURCES: Laws, 2010, ch. 472, § 9, eff from and after July 1, 2010.

CHAPTER 5

Acquisition of Land by United States Government

§ 3-5-1. Consent given for acquisition of land by the United States for certain purposes.

ATTORNEY GENERAL OPINIONS

If the state has conceded jurisdiction over hospital lands to the federal government, then the Board of Architecture would have no authority to enforce the provisions of the Architectural Registration Law; however, if the state has not conceded jurisdiction over the subject matter, architectural services, or if jurisdiction has been relinquished by the federal government, then, possibly, the board would have that authority. Kilpatrick, Jr., June 28, 2002, A.G. Op. #02-0309.

§ 3-5-3. Governor may cede jurisdiction to the United States for certain purposes.

JUDICIAL DECISIONS

2. Enforcement of state laws.

Defendant's conviction for possession of cocaine, more then 10 grams, but less than 30 grams was appropriate because the State did not lack jurisdiction to prosecute the charge against him even though he was arrested on property owned by the United States. It was not unusual for the United States to own within a state lands which were set apart and used for public purposes, and such ownership and use, without more, did not withdraw the lands from the jurisdiction of the state; Mississippi was free to enforce its criminal and civil laws on federal land as long as the laws did not conflict with federal law. Williams v. State, 5 So. 3d 496 (Miss. Ct. App. 2008), writ of certiorari denied by 11 So. 3d 1250, 2009 Miss. LEXIS 135 (Miss. 2009).

ATTORNEY GENERAL OPINIONS

If the state has conceded jurisdiction over hospital lands to the federal government, then the Board of Architecture would have no authority to enforce the provisions of the Architectural Registration Law; however, if the state has not conceded jurisdiction over the subject matter, architectural services, or if jurisdiction has been relinquished by the federal government, then, possibly, the board would have that authority. Kilpatrick, Jr., June 28, 2002, A.G. Op. #02-0309.

§ 3-5-5. Jurisdiction; relinquishment of jurisdiction to state as to land under control of federal Administrator of Veterans Affairs.

ATTORNEY GENERAL OPINIONS

If the state has conceded jurisdiction over hospital lands to the federal government, then the Board of Architecture would have no authority to enforce the provisions of the Architectural Registration Law; however, if the state has not conceded jurisdiction over the subject matter, architectural services, or if juris-

diction has been relinquished by the federal government, then, possibly, the board would have that authority. Kilpatrick, Jr., June 28, 2002, A.G. Op. #02-0309.

§ 3-5-9. Restrictions on cession.

JUDICIAL DECISIONS

3. Enforcement of state laws.

Defendant's conviction for possession of cocaine, more then 10 grams, but less than 30 grams was appropriate because the State did not lack jurisdiction to prosecute the charge against him even though he was arrested on property owned by the United States. It was not unusual for the United States to own within a state lands which were set apart and used for public purposes, and such ownership and use, without more, did not withdraw the lands from the jurisdiction of the state; Mississippi was free to enforce its criminal and civil laws on federal land as long as the laws did not conflict with federal law. Williams v. State, 5 So. 3d 496 (Miss. Ct. App. 2008), writ of certiorari denied by 11 So. 3d 1250, 2009 Miss. LEXIS 135 (Miss. 2009).

ATTORNEY GENERAL OPINIONS

If the state has conceded jurisdiction over hospital lands to the federal government, then the Board of Architecture would have no authority to enforce the provisions of the Architectural Registration Law; however, if the state has not conceded jurisdiction over the subject matter, architectural services, or if jurisdiction has been relinquished by the federal government, then, possibly, the board would have that authority. Kilpatrick, Jr., June 28, 2002, A.G. Op. #02-0309.

TITLE 5

LEGISLATIVE DEPARTMENT

CHAPTER 1

Legislature

§ 5-1-1. Apportionment of representatives.

SOURCES: Codes, 1930, § 5329; 1942, §§ 3326, 3326.1; Laws, 1940, ch. 275; Laws, 1954, ch. 317; Laws, 1955, Ex. ch. 91; Laws, 1956, ch. 408; Laws, 1960, ch. 403; Laws, 1962, ch. 577; Laws, 1963, 1st Ex Sess. ch. 34, §§ 3-7; Laws, 1964, ch. 483; Laws, 1966 Ex Sess. ch. 41, § 2; Laws, 1971, ch 394 § 1; Laws, 1973, ch. 304, § 1; Laws, 1973, ch. 456, § 1; Laws, 1975, ch. 510, § 1; Laws, 1977 2d Ex Sess, ch. 25, § 1; Laws, 1978, ch. 515, § 1; Laws, 1982, ch. 306, § 1; Laws, 2002, ch. 568, § 1, eff from and after July 29, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — The United States Attorney General, by letter dated July 29, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2002, ch. 568 § 1.

Laws of 2002, ch. 761, (Joint Resolution No. 1), entitled "A JOINT RESOLUTION TO REAPPORTION THE HOUSE OF REPRESENTATIVES OF THE STATE OF MISSISSIPPI IN ACCORDANCE WITH SECTION 254, MISSISSIPPI CONSTITUTION OF 1890; AND FOR RELATED PURPOSES.", was adopted by the House of Representatives on March 20, 2002, and by the Senate on March 21, 2002, effective from and after the date it was effectuated under the the Voting Rights Act of 1965 (effective July 29, 2002, the date the United States Attorney General interposed no objection to this chapter) provides as follows:

RESEARCH REFERENCES

ALR. Application of constitutional "compactness requirement" to redistricting. 114 A.L.R.5th 311.

State court jurisdiction over congressional redistricting disputes. 114 A.L.R.5th 387.

§ 5-1-3. Apportionment of senators.

SOURCES: Codes, 1930, § 5330; 1942 §§ 3327, 3327.1; Laws, 1963, 1st Ex Sess. ch. 34, § 1; Laws, 1966 Ex Sess, ch. 41, § 1; Laws, 1971, ch. 394 § 2; Laws, 1973, ch. 305, § 1; Laws, 1973, ch. 457, § 1; Laws, 1975, ch. 484, § 1; Laws, 1977 2d Ex Sess, ch. 26, § 1; Laws, 1978, ch. 535, § 1; Laws, 1982, ch. 305, § 1;

Laws, 2002, ch. 568 , § 2, eff from and after July 29, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — The United States Attorney General, by letter dated July 29, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2002, ch. 568, § 1.

Laws of 2002, ch. 762, (Joint Resolution No. 201), entitled "A JOINT RESOLUTION TO REDISTRICT THE MISSISSIPPI STATE SENATE; AND FOR RELATED PURPOSES." was adopted by the Senate on March 20, 2002, and by the House of Representatives on March 21, 2002, effective from and after the date it was effectuated under the the Voting Rights Act of 1965 (effective July 29, 2002, the date the United States Attorney General interposed no objection to this chapter) provides as follows:

RESEARCH REFERENCES

ALR. Application of constitutional "compactness requirement" to redistricting. 114 A.L.R.5th 311.

State court jurisdiction over congressional redistricting disputes. 114 A.L.R.5th 387.

§ 5-1-7. Holding of meetings.

RESEARCH REFERENCES

ALR. Constitutionality of Legislative Prayer Practices. 30 A.L.R.6th 459.

§ 5-1-47. Additional mileage and expense allowances of lieutenant governor, senators, and representatives.

(1) In addition to the regular salary and mileage provided by law, an expense allowance equal to the maximum daily expense rate allowable to employees of the federal government for travel in the high rate geographical area of Jackson, Mississippi, as may be established by federal regulations for each legislative day in actual attendance at a session shall be paid to the Lieutenant Governor and members of the Senate and House of Representatives, together with an additional mileage allowance as provided by Section 25-3-41, for each mile of the distance by the most direct route usually traveled in coming to and returning from the place where the Legislature is in session, which expense allowance and additional mileage allowance shall be paid at the end of each seven-day period while the Legislature is in session.

(2) In addition to the mileage allowance provided for in subsection (1) of this section, an expense allowance equal to the maximum daily expense rate allowable to employees of the federal government for travel in the high rate geographical area of Jackson, Mississippi, as may be established by federal regulations, per day, shall be paid to:

(a) The Lieutenant Governor and members of the Senate, upon the approval of the Senate Rules Committee, for attending to legislative duties on any of the following days that the Senate does not convene in session on that day: (i) any day between legislative regular or extraordinary sessions, or

(ii) any day of a legislative regular session that has been extended beyond the number of calendar days specified in Section 36, Mississippi Constitution of 1890, when that day falls after the ninetieth or one-hundred-twenty-fifth day of the session, as the case may be, or (iii) any day during a legislative extraordinary session; and

(b) Members of the House of Representatives, upon the approval of the House Management Committee, for attending to legislative duties on any of the following days that the House does not convene in session on that day: (i) any day between legislative regular or extraordinary sessions, or (ii) any day of a legislative regular session that has been extended beyond the number of calendar days specified in Section 36, Mississippi Constitution of 1890, when that day falls after the ninetieth or one-hundred-twenty-fifth day of the session, as the case may be, or (iii) any day during a legislative extraordinary session.

(3) The expense allowance and additional mileage allowance provided by this section for the Lieutenant Governor and members of the Senate shall be paid from the appropriate legislative fund of the Senate as provided by law, and the expense allowance and additional mileage allowance for members of the House of Representatives shall be paid from the appropriate legislative fund of the House of Representatives as provided by law, upon warrants drawn for such purpose in the manner provided by law.

SOURCES: Codes, 1942, § 3346.5; Laws, 1950, ch. 449; Laws, 1952, ch. 326, §§ 1, 2; Laws, 1960, ch. 326, §§ 1, 2; Laws, 1966, ch. 437, §§ 1, 2; Laws, 1970, ch. 396, § 1; Laws, 1972, ch. 356, § 2; Laws, 1974, ch. 302; Laws, 1980, ch. 560, § 2; Laws, 1985, ch. 409, § 2; Laws, 1985, ch. 539; Laws, 1988, ch. 314, § 3; Laws, 2009, ch. 483, § 2, eff from and after passage (approved Apr. 3, 2009.)

Amendment Notes — The 2009 amendment deleted "per day, or an expense allowance of Forty-four Dollars ($44.00) if the Lieutenant Governor or a Senator or Representative so chooses under subsection (2) of Section 5-1-41" following "established by federal regulations" in (1); rewrote and designated the provisions of the formerly undesignated second paragraph as present (2) and (2)(a), and added (2)(b); redesignated former (2) as present (3); and made minor stylistic changes.

§ 5-1-51. When compensation is due.

The mileage and one-third (⅓) of the salary for a regular session shall be paid at the beginning of the session. After thirty (30) days of the session have expired, another one-third (⅓) of the salary shall be paid. The remaining one-third (⅓) of the salary shall be paid (a) on the last Friday before the ninetieth day of a ninety-day session, or (b) on the earlier of the last day the Legislature is convened or the last Friday before the one-hundred-twenty-fifth day of a one-hundred-twenty-five-day session, as the case may be.

SOURCES: Codes, 1880, § 183; 1892, § 2667; 1906, § 3027; Hemingway's 1917, § 5415; 1930, § 5351; 1942, § 3349; Laws, 1912, ch. 231; Laws, 1938, ch. 169; Laws, 1946, ch. 379; Laws, 1954, ch. 325; Laws, 1956, ch. 357, § 2, eff January

1, 1957; Laws, 2009, ch. 483, § 1, eff from and after passage (approved Apr. 3, 2009.)

Amendment Notes — The 2009 amendment rewrote the section to specify the timing for paying members of the Legislature the final ⅓ of their salary.

§ 5-1-55. How compensation is obtained.

Editor's Note — Laws of 2011, ch. 506, § 2, provides:

"SECTION 2. On or before July 1 of each fiscal year, or at such other times as necessary, the Clerk of the House of Representatives or the Secretary of the Senate ("the Legislature") shall submit a request to the State Fiscal Officer for the funds necessary to pay (a) the expenses of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, (b) the state's share of various assessments from legislative-related organizations, and (c) any other legislative-related expenses. The State Fiscal Officer shall transfer to the Legislature the amount or amounts as requested by the Legislature from the Secretary of State's Fund No. 3111. The State Fiscal Officer shall transfer such obligated funds in a timely manner as determined by the Legislature. The Legislature is authorized to escalate the appropriate budgets during the fiscal year by the respective amounts transferred and to expend those sums for the purposes authorized by law."

On April 26, 2011, the Governor vetoed Section 2 of Chapter 506, Laws of 2011.

On June 1, 2011, the Mississippi Attorney General issued the following opinion regarding the constitutionality of the Governor's partial veto of Chapter 506, Laws of 2011:

"Honorable Johnny W. Stringer

"Chairman, House Appropriations Committee

"P. O. Box 1018

"Jackson, MS 39215-1018

"Re: Partial veto under Section 73 of the Mississippi Constitution

"Dear Chairman Stringer:

"Attorney General Jim Hood received your request and assigned it to me for research and response.

"Issue Presented

"Does the Governor under his partial veto authority of Section 73 of the Mississippi Constitution of 1890 have authority to veto a section of a general bill that he asserts is an appropriation within the general bill, when that section does not meet the criteria for an appropriation bill under the Mississippi Constitution?

"Response

"No. House Bill No.1 054 of the 2011 Regular Session, which is the subject of your request, is not an appropriation bill and is not subject to partial veto under Section 73 of the Mississippi Constitution of 1890.

"Background

"On April 26, 2011, the Governor returned House Bill No. 1054 to the House of Representatives with a partial veto message for Section 2 of the bill. House Bill No. 1054, which is generally known as the 'transfer bill,' is a bill that, among other things, provides for the transfer of state funds into certain accounts for use in the general fund appropriations process. The Governor said in his message that he was not concerned with the transfer components of the bill, but had concerns specifically with Section 2 of the bill.

"Applicable Law and Discussion

"Under the Mississippi Constitution of 1890 (hereinafter 'Mississippi Constitution'), the powers of government are divided between and among three separate and distinct departments, to wit, the legislative department, the executive department and the

judicial department. Miss. Const. Art. 1, Sec. 1 (1890). No person belonging to one department is authorized to exercise core powers belonging to another department. Miss. Const. Art. 1, Sec. 2 (1890); Dye v. State ex rel. Hale, 507 So. 2d 332 at 343 (Miss. 1987); and Alexander v. State ex rel. Alain, 441 So. 2d 1329 (Miss. 1983).

"The enactment of laws is an exercise of legislative power, which is subject to the executive power of veto. The Mississippi Constitution authorizes two types of vetoes, one which is applicable to all bills and is total in nature and another which is applicable only to appropriation bills and is partial in nature.

"Section 72[1] authorizes the Governor to approve or disapprove, by way of veto, every bill that passes both houses of the Legislature:

"Every Bill which shall pass both Houses shall be presented to the Governor of the state. If he approve, he shall sign it; but if he does not approve, he shall return it, with his objections, to the House in which it originated, which shall enter the objections at large upon its Journal, and proceed to reconsider it. If after such reconsideration two-thirds (⅔) of that House shall agree to pass the Bill, it shall be sent, with the objections, to the other House, by which, likewise, it shall be reconsidered; and if approved by two-thirds (⅔) of that House, it shall become a law; but in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the Governor within five (5) days (Sundays excepted) after it has been presented to him, it shall become a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevented its return, in which case such Bill shall be a law unless the Governor shall veto it within fifteen (15) days (Sundays excepted) after it is presented to him, and such Bill shall be returned to the Legislature, with his objections, within three (3) days after the beginning of the next session of the Legislature.

"In exercising the gubernatorial veto under Section 72, the Governor must veto the entire bill. There is no power to approve parts of a bill, while disapproving other parts.

"In contrast, Section 73 authorizes the Governor to veto parts and approve parts of any 'appropriation bill':

"The governor may veto parts of any appropriation bill, and approve parts of the same, and the portions approved shall be law.

"The power to approve parts of a bill, while vetoing or disapproving other parts of the same bill, is expressly limited to appropriation bills and may not be exercised with regard to other legislation. An attempt to partially veto any bill other than an appropriation bill would be outside the authority granted to the Governor under the Mississippi Constitution and would be an impermissible infringement of the powers of the Legislature.

"The Mississippi Supreme Court in *Fordice v. Bryan,*651 So. 2d 998 (Miss. 1995), a case involving the exercise of a partial veto, stated:

"Article IV, Section 73 of the Mississippi Constitution of 1890 states: 'The governor may veto *parts* of any *appropriation bill*, and approve parts of the same, and the portions approved shall be law.' Miss. Const. art. IV, Section 73 (emphasis added). Therefore, the Governor is entitled to exercise his Section 73 veto power upon 'parts' of 'appropriation' bills, and only upon 'parts' of 'appropriation' bills. The Governor may not exercise the Section 73 partial veto power on revenue raising bond bills.

"In order for the bills to be susceptible to the Governor's Section 73 partial veto power, they must fix a definite maximum amount, Section 63, and not continue to be in force withdrawing money from the state treasury longer than two months after the expiration of the fiscal year ending after the meeting of the legislature at its next regular session, Section 64. 651 So. 2d 998, 1000.

"Although there is no definition of 'appropriation bill' in the Mississippi Constitution, there are mandatory requirements for appropriation bills contained therein. Section 63,

[1]Unless otherwise indicated all section numbers refer to sections of the Mississippi Constitution of 1890.

which requires an appropriation bill to state the maximum sum authorized to be drawn from the State Treasury, states:

"No appropriation bill shall be passed by the legislature which does not fix definitely the maximum sum thereby authorized to be drawn from the treasury.

"Section 64, which provides that bills making appropriations out of the State Treasury only be in force no more than two months after the expiration of the fiscal year, states:

"No bill passed after the adoption of this Constitution to make appropriations of money out of the state treasury shall continue in force more than two months after the expiration of the fiscal year ending after the meeting of the legislature at its next regular session; nor shall such bill be passed except by the votes of a majority of all members elected to each house of the legislature.

"Section 69 prescribes the contents of appropriation bills and prohibits the engrafting of other legislation therein and reads as follows:

"General appropriation bills shall contain only the appropriations to defray the ordinary expenses of the executive, legislative, and judicial departments of the government; to pay interest on state bonds, and to support the common schools. All other appropriations shall be made by separate bills, each embracing but one subject. Legislation shall not be engrafted on the appropriation bills, but the same may prescribe the conditions on which the money may be drawn, and for what purposes paid.

"Section 68 provides that appropriation bills (and revenue bills) have precedence in the Legislature over all other business:

"Appropriation and revenue bills shall, at regular sessions of the legislature, have precedence in both houses over all other business, and no such bills shall be passed during the last five days of the session.

"Under the Joint Rules of the Senate and the House, appropriation bills and revenue bills are subject to deadlines during the legislative session which are different from other bills. See Joint Rule 40 (2011).

"In accordance with *Fordice v. Bryan, supra*, the validity of a partial veto under Section 73 depends on the nature of the bill itself, i.e., is House Bill No.1054 an appropriation bill subject to partial veto under Section 73 or is it a general bill subject only to the general veto provisions of Section 72? If House Bill No. 1054 is not an appropriation bill, then it is not subject to partial veto under Section 73.

"To determine whether House Bill No. 1054 is an appropriation bill, it is necessary (1) to examine and compare its provisions with the constitutional sections which prescribe the mandatory provisions of an appropriations bill and (2) to examine the legislative process in which House Bill No. 1054 came to be enacted, i.e., was House Bill No. 1054 handled procedurally as an appropriation bill?

"House Bill No.1054 contains no maximum amount which may be withdrawn from the Treasury as required by Section 63. House Bill No.1054 is not limited in duration to no more than two months after the expiration of the fiscal year as required by Section 64. Its contents are not limited to appropriations defraying the expenses of State government, paying interest on state bonds, and supporting the common schools as required by Section 69.

"In addition to not satisfying the constitutional requirements of appropriation bills, House Bill No.1054 contains provisions commonly seen in general bills. For example, House Bill No.1054 *inter alia* authorizes a half dozen transfers of funds making it similar to 'transfer bills' in previous legislative sessions, which were also treated procedurally by the Legislature as general bills. House Bill No.1059, 2010 Regular Session and House Bill No. 1505, 2009 Regular Session. In addition, House Bill No. 1054 authorizes the borrowing of special funds to offset any temporary cash flow deficiency in the Health Care Expendable Fund. It provides that certain funds held for veterans by the State Veterans Home shall be considered to be held in a fiduciary capacity for the benefit of the veterans. House Bill No.1054 also revises the time limit in which a resident of the coastal counties, whose residence was destroyed by Hurricane

Katrina, must begin construction in order to not be required to meet current lot size requirements. These provisions are all similar in nature to other provisions commonly found in general bills.

"Section 2 of House Bill No. 1054, which was the subject of the Governor's veto message, reads as follows:

"On or before July 1 of each fiscal year, or at such other times as necessary, the Clerk of the House of Representatives or the Secretary of the Senate ('the Legislature') shall submit a request to the State Fiscal Officer for the funds necessary to pay (a) the expenses of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, (b) the state's share of various assessments from legislative-related organizations, and (c) any other legislative-related expenses. The State Fiscal Officer shall transfer to the Legislature the amount or amounts as requested by the Legislature from the Secretary of State's Fund No. 3111. The State Fiscal Officer shall transfer such obligated funds in a timely manner as determined by the Legislature. The Legislature is authorized to escalate the appropriate budgets during the fiscal year by the respective amounts transferred and to expend those sums for the purposes authorized by law.

"Briefly stated, Section 2 of House Bill No. 1054 authorizes the transfer of funds from the Secretary of State's Fund No. 3111[2], the escalation of the Legislature's budget by amounts transferred from Fund No. 3111, and the payment of legislative expenses specified therein.

"While Section 2 of House Bill No. 1054 authorizes the expenditure of public funds, it does not do so within the framework of an appropriation bill. Appropriation bills are not the exclusive legislative vehicle for authorizing the expenditure of public funds. As you note in your letter of request, the Department of Finance and Administration is authorized by Section 7-1-255 of the Mississippi Code, a general law provision, to escalate its budget based on application fees it receives. Similarly, the Department of Audit is authorized by Section 7-7-81 (2) of the Mississippi Code, another general law provision, to escalate its budget based on funds deposited in the 'Auditor's Enhanced Accountability Fund.' Upon each agency's respective budget being escalated, these Code sections authorize the Department of Finance and Administration and the Department of Audit to expend available funds. No further action of the Legislature is necessary. You list thirteen other examples of escalation and expenditure authority by general laws in your letter.[3]

"In addition, bond bills, specifically found not to be appropriation bills in *Fordice v. Bryan,* supra, and, therefore, not subject to partial veto, typically authorize the expenditure of public funds after bonds are issued without any further act of the Legislature. Similarly, legislation establishing revolving funds, though not appropriation bills, generally authorize the expenditure of public funds without any further act of the Legislature.

"The provisions in Section 2 of House Bill No.1054 are similar to the general law escalation provisions mentioned above and the thirteen other general law examples referenced in your letter. Once the transfer of funds is made from Fund No. 3111 and the Legislature's budget is escalated, the Legislature is authorized to make expenditures from available funds.

"With regard to its procedural treatment by the Legislature, House Bill No.1054 was not afforded the precedence and deadlines applicable to appropriation bills. Instead, House Bill No. 1054 was subject to the deadlines applicable to general bills. The 'transfer bills' in previous legislative sessions, referred to above, were also treated procedurally by the Legislature as general bills.

"All of the comparisons of the constitutional requirements for appropriation bills with the contents of House Bill No. 1054 and the legislative procedure employed for

[2]Fund No. 3111 contains special funds which are generated by fees earned by the Secretary of State and the Legislature appropriates funds therefrom for some of the operations of the Secretary of State's office.

[3]See Sections 17-17-63(3), 21-35-31 (2), 27-19-44.2(2), 27-19-179(2), 27-103-303(4), 31-913,33- 15-311(2),37-151- 25,45-39-5(4), 57-1-303(1)(a), 57-75-15(4)(b)-(m), 57-75-15(18)(b), and 69-46-7(1) and (2) of the Mississippi Code.

enactment indicate that House Bill No. 1054 is a general bill, not an appropriation bill. The Governor, in his veto message, acknowledged that House Bill No. 1054 is a general bill. However, he characterizes House Bill No. 1054 as a general bill which contains an appropriation in Section 2 and, therefore, is subject to a partial veto.

"We are unable to find any authority for the proposition that any bill which authorizes the expenditure of public funds is an appropriation bill for purposes of Section 73. On the contrary, it is clear under *Fordice v. Bryan, supra*, that a bill must meet the constitutional requirements set forth for appropriation bills in order to be subject to partial veto under Section 73. While the Governor was authorized to exercise his general veto authority under Section 72 with regard to House Bill No.1054, he was not authorized to exercise his partial veto authority under Section 73. An unconstitutional attempt of a partial veto is a nullity. *See Fordice v. Bryan, supra, and State v. Holder*, 76 Miss. 158, 23 So. 643 (1898).

"Conclusion

"It is the opinion of this office that House Bill No.1054 of the 2011 Regular Session is not an appropriation bill and, therefore, is not subject to partial veto under Section 73."

§ 5-1-85. Publication of fiscal note for certain bills or concurrent resolutions.

For any bill or concurrent resolution, the purpose or effect of which is to expend state funds or enable the spending of state funds, or to increase or decrease the revenue of the state, either directly or indirectly, that passes out of a committee for which a fiscal note was drafted, the fiscal note shall be published in electronic form on the Mississippi Legislature website on the web page that provides the bill text, description, background information, history of actions, amendments, and additional information for the bill within twenty-four (24) hours of passing out of committee. If a fiscal note was not drafted for any such bill or concurrent resolution, the statement "No fiscal note conducted" shall be included on the web page.

SOURCES: Laws, 2012, ch. 324, § 1, effective July 1, 2012.

Editor's Note — A former § 5-1-85 [Codes, 1942, § 3828-02; Laws, 1944, ch 264, § 3; 1954, ch 324, § 1; Repealed by Laws, 1983, ch. 329, § 4, effective from and after passage (approved March 9, 1983)] provided for the employment of legislative draftsmen by the state legislature.

CHAPTER 3

Legislative Committees

JOINT LEGISLATIVE COMMITTEE ON PERFORMANCE EVALUATION AND EXPENDITURE REVIEW

SEC.

§ 5-3-55. Membership and organization of committee.

The committee shall be composed of seven (7) members from the Senate and seven (7) members from the House of Representatives, one (1) from each of the congressional districts of the State of Mississippi as they currently exist and three (3) from the state at large, to be appointed by the Lieutenant Governor and the Speaker of the House of Representatives for a term concurrent with their term in their respective house. For the remainder of the present term, the Lieutenant Governor and Speaker shall make their respective appointments within fifteen (15) days after sine die adjournment of the 2004 Regular Session; and for each full four-year term thereafter, the Lieutenant Governor and Speaker shall make their appointments within fifteen (15) days after the first calendar day of the regular session in the first year of such four-year term. The term of each member shall be concurrent with his term of office.

The committee shall meet no later than ten (10) days after the final day of the 2004 Regular Session, and annually thereafter, for the purpose of organizing by electing from the membership a chairman, vice chairman and secretary.

SOURCES: Laws, 1973, ch. 331, § 3; Laws, 2004, ch. 356, § 1, eff from and after passage (approved Apr. 20, 2004.)

Amendment Notes — The 2004 amendment, in the first paragraph, substituted "seven (7) members" for "five (5) members," and inserted "as they currently exist and three (3) from the state at large" in the first sentence, substituted "2004 Regular Session" for "1973 Regular Session" in the second sentence, and deleted the former third sentence which read: "No member of the committee shall serve as a member of the commission of budget and accounting the state building commission the Mississippi Classification Commission or any other state governmental board or commission"; and substituted "2004 Regular Session and annually thereafter" for "1973 Legislature" in the second paragraph.

§ 5-3-67. Compensation and expenses.

Members of the committee shall serve without compensation, provided that they shall be entitled to per diem compensation as is authorized by Section 25-3-69 for each day occupied with the discharge of official duties as members of the committee plus the expense allowance equal to the maximum daily expense rate allowable to employees of the federal government for travel in the high rate geographical area of Jackson, Mississippi, as may be established by federal regulations, per day, including mileage as authorized by Section 25-3-41. However, no committee member shall be authorized to receive

reimbursement for expenses, including mileage, or per diem compensation unless such authorization appears in the minutes of the committee and is signed by the chairman or vice chairman. The members of the committee shall not receive per diem or expenses while the Legislature is in session. However, members may receive the per diem and expenses authorized by this section when the Legislature is in session but in recess under the terms of a concurrent resolution, or in recess during an extraordinary session. All expenses incurred by and on behalf of the committee shall be paid from a sum to be provided in equal portion from the contingency funds of the Senate and House of Representatives.

The committee staff and employees or contract organizations employed by the committee may continue at the discretion of the committee any investigations, audits or performance evaluation during the time the Legislature is in session.

SOURCES: Laws, 1973, ch. 331, § 9; Laws, 1980, ch. 560, § 3; Laws, 1988, ch. 314, § 1; Laws, 2009, ch. 483, § 4, eff from and after passage (approved Apr. 3, 2009.)

Amendment Notes — The 2009 amendment added the next-to-last sentence in the first paragraph.

§ 5-3-69. Quorum; meetings.

There shall be no business transacted, including adoption of rules or procedure, without the presence of a quorum of the committee, which shall be eight (8) members to consist of four (4) members from the Senate and four (4) members from the House of Representatives, and no action shall be valid unless approved by the majority of those members present and voting, and entered upon the minutes of the committee and signed by the chairman and vice chairman. All actions of the committee shall be approved by at least four (4) Senate members and four (4) House members.

The committee shall meet at the time and place as designated by the majority vote of the members, provided that a special meeting may be called by the chairman or by a petition signed by no less than five (5) members. No action taken by the committee at any special meeting shall be valid unless each member shall have been given at least forty-eight hours' notice of the meeting, along with a statement of the business to be considered, and unless such action be entered upon the minutes of the committee and signed by the chairman.

SOURCES: Laws, 1973, ch. 331, § 10; Laws, 2004, ch. 356, § 2, eff from and after passage (approved Apr. 20, 2004.)

Amendment Notes — The 2004 amendment, in the first paragraph, substituted "eight (8) members" for "six (6) members" in the first sentence, and substituted "four (4) members" for "three (3) members" throughout the first paragraph; and substituted "five (5) members" for "four (4) members" in the second paragraph.

STANDING JOINT CONGRESSIONAL REDISTRICTING COMMITTEE

§ 5-3-123. Preparation of plan to redistrict congressional districts.

JUDICIAL DECISIONS

1. State Legislature responsible for redistricting.

Chancery court did not have jurisdiction to adopt a congressional redistricting plan after the State Legislature failed to perform its statutorily mandated duty to do so; pursuant to state law, the State Legislature was the only state governmental entity authorized to draw new congressional districts, which then had to be precleared under federal voting law before they could be implemented, and any state court at most only had the authority to assist the State Legislature in such a matter. Mauldin v. Branch, 866 So. 2d 429 (Miss. 2003).

§ 5-3-127. Cooperation with other state agencies; employment of experts; other employees.

JUDICIAL DECISIONS

1. State court's role in redistricting.

Chancery court did not have jurisdiction to adopt a congressional redistricting plan after the State Legislature failed to perform its statutorily mandated duty to do so; the State Legislature was the only state governmental entity authorized under state law to draw new congressional districts, which then had to be precleared pursuant to federal voting law before they could be implemented and any state court at most only had the authority to assist the State Legislature in such a matter. Mauldin v. Branch, 866 So. 2d 429 (Miss. 2003).

CHAPTER 8

Lobbying Law Reform Act of 1994

§ 5-8-3. Definitions.

JUDICIAL DECISIONS

1. Public employees and officials.

Person who was merely employed by the state was not a public officer or official for purposes of Miss. Code Ann. § 5-8-3(q). Young v. Stevens, 968 So. 2d 1260 (Miss. 2007).

ATTORNEY GENERAL OPINIONS

Public employees such as members of the Mississippi State Board of Architecture are subject to the registration and reporting requirements of the Lobbying Reform Act of 1974. Wilkinson, Nov. 21, 2003, A.G. Op. 03-0624.

§ 5-8-7. Persons excluded from definition of "lobbyist" and "lobbyist's client".

ATTORNEY GENERAL OPINIONS

The Executive Director of the Public Employees' Retirement System is a public employee insofar as the lobbying laws are concern. Nothing in this section excludes a public employee from the definition of "lobbyist." Flowers, Nov. 16, 2004, A.G. Op. 04-0542.

§ 5-8-13. Prohibited acts; required acts.

ATTORNEY GENERAL OPINIONS

The provisions of subsection (4) of this section are not applicable to the four "nonappointed" members of the Mississippi Title V Advisory Council. Chisholm, Aug. 8, 2003, A.G. Op. 03-0403.

Where an attorney/lobbyist member of a legislator's law firm would have a separate business and work through an entirely separate corporation owned by the attorney himself in which the legislator would have no ownership and no involvement, there would be a violation of lobbying laws on the part of the legislator. Ross, Oct. 20, 2006, A.G. Op. 06-0545.

§ 5-8-15. Investigations of violations of chapter.

ATTORNEY GENERAL OPINIONS

This section bestows jurisdiction to investigate violations of the lobbying laws on both the attorney general and the appropriate district attorney. Flowers, Nov. 16, 2004, A.G. Op. 04-0542.

§ 5-8-17. Penalties; Ethics Commission hearings; appeals; investigation by Attorney General of continued non-compliance.

ATTORNEY GENERAL OPINIONS

Anyone who has knowledge that a person failed to file a report or filed a report which fails to comply with the requirements of the lobbying laws. Should provide pertinent information to the secretary of state. No statute of limitations can be found that would be applicable to the assessment of a civil penalty. Flowers, Nov. 16, 2004, A.G. Op. 04-0542.

§ 5-8-21. Penalties for intentional violations; prosecution of corporation or association not barred.

ATTORNEY GENERAL OPINIONS

Anyone who wishes to initiate a criminal prosecution may do so by filing an appropriate sworn affidavit. However, pursuant to § 99-1-5, such prosecution

must be commenced within two years after the commission of the offense. Flowers, Nov. 16, 2004, A.G. Op. 04-0542.

CHAPTER 9

Agency Review

§ 5-9-13. Executive orders establishing governmental units enacted into statutory law.

ATTORNEY GENERAL OPINIONS

If the Legislature has decided not to renew the authority of a state agency, then the Governor lacks the authority to re-create that agency using an executive order. McCoy, May 20, 2004, A.G. Op. 04-0227.

TITLE 7

EXECUTIVE DEPARTMENT

CHAPTER 1

Governor

GENERAL PROVISIONS

§ 7-1-5. Powers generally.

In addition to the powers conferred and duties imposed on the Governor by the constitution and by the laws as elsewhere provided, he shall have the powers and perform the duties following:

(a) He is the supreme executive officer of the state.

(b) He is the commander in chief of the militia of the state and may call out the militia to execute the laws, to suppress insurrections or riots, and to repel invasions.

(c) He shall see that the laws are faithfully executed.

(d) He is to supervise the official conduct of all executive and ministerial officers.

(e) He is to see that all offices are filled and the duties of the offices are performed or, in default thereof, apply such remedy as the law allows; and if the remedy is inadequate, he shall inform the Legislature at its next session.

(f) He shall make appointments and fill vacancies as prescribed by law.

(g) Whenever any suit or legal proceeding is pending that affects the title of the state to any property, or that may result in any claim against the state, he may direct the Attorney General to appear on behalf of the state and protect its interest.

(h) He may require the Attorney General, or district attorney of any district, to inquire into the affairs or management of any corporation existing under the laws of this state, or doing business in this state under the laws of the state.

(i) He may require the Attorney General to aid any district attorney in the discharge of his duties.

(j) He may offer rewards, not exceeding Two Hundred Dollars ($200.00), for persons with mental illness who have escaped and are dangerous, and such other rewards as are authorized by law.

(k) He may require any officer or board to make special reports to him upon demand in writing.

(*l*) He shall transact all necessary business with state officers, shall require them to be present at their respective offices at all reasonable business hours, and may require information, in writing, from any such officer relating to the duties of his office.

(m) When deemed advisable upon proceedings for the arrest in this state of fugitives from justice from other states or countries, he may commission a special officer to arrest the fugitive in any part of the state.

(n) He may bring any proper suit affecting the general public interests, in his own name for the State of Mississippi, if after first requesting the proper officer so to do, the officer refuses or neglects to do the same.

SOURCES: Codes, 1892, § 2156; 1906, § 2372; Hemingway's 1917, § 4764; 1930, § 4817; 1942, § 3975; Laws, 2008, ch. 442, § 3, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment deleted "viz" from the end of the introductory paragraph; in (e), substituted "of the offices are" for "therefrom," "is inadequate" for "be imperfect," and "inform the Legislature" for "aquaint the Legislature therewith"; rewrote (j); and made minor stylistic changes throughout.

JUDICIAL DECISIONS

4. Enforcement of laws.

Motion to intervene filed by the Governor of Mississippi, the Mississippi Division of Medicaid, and the Mississippi Health Care Trust Fund could not be set aside for a perceived lack of statutory or legal authority because: (1) the Governor unquestionably had not only the statutory but also the constitutional authority to intervene since the Governor was under a solemn duty to act in order to assure faithful execution of Mississippi's laws; (2) the division had a compelling interest to see that the annual payments of $20 million were placed in the Mississippi Health Care Trust Fund because the suit was initially brought to recoup monies expended by the division; (3) the Mississippi Health Care Trust Fund was authorized to recoup funds paid to a partnership, a non-profit organization created to reduce under age smoking; and (4) the Mississippi Attorney General declined to take action. Hood ex rel. State Tobacco Litigation v. State, 958 So. 2d 790 (Miss. 2007).

§ 7-1-7. Acceptance of gifts and bequests.

ATTORNEY GENERAL OPINIONS

The Mississippi Board of Animal Health can accept donations from private groups for the purposes of training and purchasing equipment and commodities necessary to respond to emergencies. Watson, Feb. 3, 2006, A.G. Op. 06-0005.

§ 7-1-25. Arrest and delivery of fugitives from justice.

JUDICIAL DECISIONS

3. Review.

Where an Arkansas merchant filed criminal charges against a Mississippi defendant for theft of property, a writ of extradition was issued, and defendant's habeas corpus petition was denied, defendant was entitled to another hearing, since he was not allowed to put into evidence the proof that he offered at the habeas hearing, to rebut the prima facie case established by the rendition warrant and the other extradition documents, in an attempt to demonstrate that the documents were not on their face in order. Sonkin v. State, 824 So. 2d 564 (Miss. 2002).

§ 7-1-35. Appointment of officers.

ATTORNEY GENERAL OPINIONS

Where a vacancy on the Mississippi Commission on Wildlife, Fisheries and Parks occurred during the session and not during the last five days of the session, the vacancy could not be filled by the governor's appointment during the vacation of the senate. McArthur, III, Apr. 26, 2002, A.G. Op. #02-0241.

Persons nominated for membership on the Mississippi Board of Medical Licensure, whose names were returned by the Senate to the Governor, are no longer members of the board and may not serve in any capacity as board members. Burnett, Feb. 13, 2004, A.G. Op. 04-0063.

§ 7-1-61. Duty in respect to defaulter.

ATTORNEY GENERAL OPINIONS

There is no statutory authority for a board of supervisors to continue to pay a suspended tax collector where no services will be performed and where there is no authority for the collector to act and perform any duties in any official capacity. An individual appointed to serve as tax collector on a temporary basis is entitled to the same compensation as an elected tax collector was receiving at the time of suspension. McWilliams, Oct. 24, 2003, A.G. Op. 30-0572.

The governor has authority, upon being satisfied that investigations have been closed, to rescind his prior order suspending a tax collector and thereby reinstate her to office. Straughter, Apr. 26, 2005, A.G. Op. 05-0207.

DIVISION OF JOB DEVELOPMENT AND TRAINING

SEC.

§ 7-1-355. Administration of Workforce Investment Act programs [Repealed effective July 1, 2019].

(1) The Mississippi Department of Employment Security, Office of the Governor, is designated as the sole administrator of all programs for which the state is the prime sponsor under Title 1(B) of Public Law 105-220, Workforce

Investment Act of 1998, and the regulations promulgated thereunder, and may take all necessary action to secure to this state the benefits of that legislation. The Mississippi Department of Employment Security, Office of the Governor, may receive and disburse funds for those programs that become available to it from any source.

(2) The Mississippi Department of Employment Security, Office of the Governor, shall establish guidelines on the amount and/or percentage of indirect and/or administrative expenses by the local fiscal agent or the Workforce Development Center operator. The Mississippi Department of Employment Security, Office of the Governor, shall develop an accountability system and make an annual report to the Legislature before December 31 of each year on Workforce Investment Act activities. The report shall include, but is not limited to, the following:

(a) The total number of individuals served through the Workforce Development Centers and the percentage and number of individuals for which a quarterly follow-up is provided;

(b) The number of individuals who receive core services by each center;

(c) The number of individuals who receive intensive services by each center;

(d) The number of Workforce Investment Act vouchers issued by the Workforce Development Centers including:

(i) A list of schools and colleges to which these vouchers were issued and the average cost per school of the vouchers; and

(ii) A list of the types of programs for which these vouchers were issued;

(e) The number of individuals placed in a job through Workforce Development Centers;

(f) The monies and the amount retained for administrative and other costs received from Workforce Investment Act funds for each agency or organization that Workforce Investment Act funds flow through as a percentage and actual dollar amount of all Workforce Investment Act funds received.

SOURCES: Laws, 1980, ch. 496, § 3; Laws, 2001, ch. 389, § 1; Laws, 2004, ch. 572, § 57; Laws, 2005, ch. 391, § 1; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 57; reenacted without change, Laws, 2010, ch. 559, § 57; reenacted without change, Laws, 2011, ch. 471, § 58; reenacted without change, Laws, 2012, ch. 515, § 57, eff from and after July 1, 2012.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, and as amended by Laws of 2012, ch. 515, § 58, provides:

"SECTION 60. This act shall stand repealed on July 1, 2019."

Amendment Notes — The 2004 amendment rewrote the section.

The 2005 amendment transferred the responsibility to administer the Federal Workforce Investment Act from the Mississippi Development Authority to the Department of Employment Security, Office of the Governor" for "Mississippi Development Authority" in (1) and (2); and inserted "each" preceding "center" in (2)(c).

The 2008 amendment (ch. 30, 1st Ex Sess) reenacted the section without change.

The 2010 amendment reenacted the section without change.
The 2011 amendment reenacted the section without change.
The 2012 amendment reenacted the section without change.

CHAPTER 3

Secretary of State

GENERAL PROVISIONS

SEC.
7-3-15. "Southern Reporter—Mississippi Cases" distributed.
7-3-59. Fees collected under Section 75-9-525.

§ 7-3-15. "Southern Reporter—Mississippi Cases" distributed.

The Secretary of State shall transmit, free of cost, one (1) copy of each volume of "Southern Reporter-Mississippi Cases" to the sheriff of each county of the state, for the county library, if the sheriff specifically requests copies of the volumes of "Southern Reporter-Mississippi Cases" in writing; one (1) copy of each volume thereof to each of the following educational institutions: Mississippi State University, Alcorn State University, Mississippi University for Women, Mississippi College School of Law, Delta State University, Jackson State University, Mississippi Valley State University, and the University of Southern Mississippi; ten (10) copies of each volume thereof to the University of Mississippi; and one (1) copy of each volume to the Library of Congress at Washington, D.C.

The above provisions of this section are made in recognition of benefits received through receipt at depository libraries and elsewhere in the State of Mississippi of public documents of the United States under the provisions of federal and state laws.

SOURCES: Codes, 1880, § 265; 1892, § 4093; 1906, § 4645; Hemingway's 1917, § 7483; 1930, § 6943; 1942, § 4203; Laws, 1936, 1st Ex. ch. 14; Laws, 1940, ch. 317; Laws, 1992, ch. 543, § 13; Laws, 2002, ch. 351, § 3; Laws, 2012, ch. 390, § 2, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment added "if the sheriff specifically requests copies of the volumes of "Southern Reporter-Mississippi Cases" in writing" preceding "one (1) copy of each volume thereof to each of the following" in the first paragraph.

§ 7-3-59. Fees collected under Section 75-9-525.

(1) Except as otherwise provided in this section, all fees collected by the Office of the Secretary of State under Section 75-9-525 shall be deposited in State Treasury Special Fund 3111, and shall be used to operate the activities of the Office of the Secretary of State as necessary to administer the filing and

research provisions of Revised Article 9 of the Uniform Commercial Code and to pay to each chancery clerk such amounts as that clerk shall be owed under subsection (2) of this section. The expenditure of the funds deposited in this fund shall be paid by the State Treasurer upon requisition signed by the Office of the Secretary of State.

(2)(a) Through September 30, 2007, for each filing and indexing of a financing statement under Part 5 (Filing) of Title 75, Chapter 9 (Uniform Commercial Code Revised Article 9 — Secured Transactions), the Secretary of State shall remit the following fee to the chancery clerk of the Mississippi county, if any, indicated on the face of the financing statement as the domicile of the debtor, or, if no county is so indicated, the Mississippi county of the address of the debtor stated on the financing statement.

(i) Five Dollars ($5.00), when the financing statement is communicated in writing, either in the standard form prescribed by the Secretary of State or not in the standard form so prescribed, plus Two Dollars ($2.00) for each additional debtor name more than one (1) required to be indexed.

(ii) Five Dollars ($5.00) if the financing statement is communicated by another medium authorized by filing-office rule.

(b) From and after October 1, 2007, for each filing and indexing of a financing statement under Part 5 (Filing) of Title 75, Chapter 9 (Uniform Commercial Code Revised Article 9 — Secured Transactions), the Secretary of State shall remit the following fee to the County Voting Systems Assistance Bond Sinking Fund created under Section 3 of Chapter 309, Laws of 2006, in such amounts as specified in Section 3 of Chapter 309, Laws of 2006, and shall distribute the remainder of the fees to the "Help Mississippi Vote Fund" created in Section 23-15-169.7.

(i) Five Dollars ($5.00), when the financing statement is communicated in writing, either in the standard form prescribed by the Secretary of State or not in the standard form so prescribed, plus Two Dollars ($2.00) for each additional debtor name more than one (1) required to be indexed.

(ii) Five Dollars ($5.00) if the financing statement is communicated by another medium authorized by filing-office rule.

(3) The Secretary of State shall remit to each chancery clerk not less than monthly the amount owed under subsection (2) of this section. Each payment shall be accompanied by a detailed accounting of the transactions represented by that payment. However, from and after October 1, 2007, the Secretary of State shall remit to the County Voting Systems Assistance Bond Sinking Fund and the "Help Mississippi Vote Fund" not less than monthly the amount provided under subsection (2) of this section. Each payment shall be accompanied by a detailed accounting of the transactions represented by that payment.

SOURCES: Laws, 2001, ch. 495, § 36; Laws, 2006, ch. 309, § 19, eff from and after passage (approved Feb. 21, 2006.)

Amendment Notes — The 2006 amendment added "Except as otherwise provided in this section" at the beginning of (1); in (2), designated the former introductory

paragraph as (a), added "Through September 30, 2007" at the beginning of (a), redesignated former (a) and (b) as present (a)(i) and (ii), and added (2)(b); added the last two sentences in (3); and deleted former (4), which contained a repealer for the section.

Cross References — Help Mississippi Vote Fund, see § 23-15-169.7.

Uniform Commercial Code Revised Article 9 — Secured Transactions, see §§ 75-9-101 et seq.

CHAPTER 5

Attorney General

IN GENERAL

SEC.

§ 7-5-1. Qualifications, election, and duties.

The Attorney General provided for by Section 173 of the Mississippi Constitution shall be elected at the same time and in the same manner as the Governor is elected. His term of office shall be four (4) years and his compensation shall be fixed by the Legislature. He shall be the chief legal officer and advisor for the state, both civil and criminal, and is charged with managing all litigation on behalf of the state, except as otherwise specifically provided by law. No arm or agency of the state government shall bring or defend a suit against another arm or agency without prior written approval of the Attorney General. He shall have the powers of the Attorney General at common law and, except as otherwise provided by law, is given the sole power to bring or defend a lawsuit on behalf of a state agency, the subject matter of which is of statewide interest. He shall intervene and argue the constitutionality of any statute when notified of a challenge thereto, pursuant to the Mississippi Rules of Civil Procedure. His qualifications for office shall be as provided for chancery and circuit judges in Section 154 of the Mississippi Constitution.

SOURCES: Codes, 1930, § 3655; 1942, § 3826; Laws, 1930, ch. 154; Laws, 1970, ch. 348, § 1; Laws, 1991, ch. 573, § 3; Laws, 2012, ch. 546, § 1, eff from and after July 1, 2012.

Editor's Note — Section 37-4-5 provides that the terms "Junior College Commission" and "State Board for Community and Junior Colleges," wherever they appear in the laws of Mississippi, shall mean the "Mississippi Community College Board."

Amendment Notes — The 2012 amendment added "except as otherwise specifically provided by law" in the third sentence; deleted "such" preceding "arm or agency" in the fourth sentence; inserted "except as otherwise provided by law" in the fifth sentence; and made a minor stylistic change.

ATTORNEY GENERAL OPINIONS

The attorney general's office would be authorized to represent an investigator hired by the board of bar admission as an "employee" of the board. Lackey, July 8, 2005, A.G. Op. 05-0303.

§ 7-5-5. Assistants to the attorney general.

(1) The Attorney General shall appoint nine (9) competent attorneys, each of whom shall be designated as an assistant attorney general. The assistants shall each possess all of the qualifications required by law of the Attorney General and shall have power and authority under the direction and supervision of the Attorney General to perform all of the duties required by law of that officer; and each shall be liable to the pains and penalties to which the Attorney General is liable. The assistants shall serve at the will and pleasure of the Attorney General, and they shall devote their entire time and attention to the duties pertaining to the department of justice as required by the general laws. The compensation of all assistants authorized by law shall be fixed by the Attorney General not to exceed the compensation fixed by law.

(2)(a) The Attorney General shall designate three (3) of the assistant attorneys general authorized under subsection (1) of this section to devote their time and attention primarily to defending and aiding in the defense in all courts of any suit, filed or threatened, against the State of Mississippi, against any subdivision thereof, or against any agency or instrumentality of the state or subdivision, including all elected officials and any other officer or employee thereof. When the circumstances permit, the assistants may perform any of the Attorney General's powers and duties, including, but not limited to, engaging in lawsuits outside the state when in his opinion this would help bring about the equal application of federal laws and court decisions in every state and guaranteeing equal protection of the laws as guaranteed every citizen by the United States Constitution.

(b) The Attorney General may employ outside counsel as special assistant attorneys general on a fee or contract basis; the Attorney General shall be the sole judge of the compensation in such cases except as otherwise provided in Section 7-5-8.

(i) Any contract for services of outside counsel shall require current and complete written time and expense records that describe in detail the time, in increments of no greater than one tenth (1/10) of an hour, and money spent each day in performance of the contract.

(ii) On conclusion of the matter for which the outside legal services were obtained, outside counsel shall provide a complete written statement of all fees and expenses, and the final complete time and expense records.

(3) The Attorney General may discharge any assistant attorney general or special assistant attorney general at his pleasure and appoint another in his stead. The assistant attorneys general shall devote their entire time and attention to the duties pertaining to the Department of Justice under the control and supervision of the Attorney General.

SOURCES: Codes, 1906, § 183; Hemingway's 1917, § 3471; 1930, § 3656; 1942, §§ 3827, 3827-01, 3827-04; Laws, 1902, ch. 58; Laws, 1929, ch. 15; Laws, 1930, ch. 154; Laws, 1956, ch. 358, § 1; Laws, 1960, ch. 270; Laws, 1962, ch. 487, §§ 1, 4; Laws, 1970, ch. 348, §§ 2, 3; Laws, 2012, ch. 546, § 2, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment rewrote this section.

§ 7-5-7. Outside counsel and special investigators.

(1) The Governor may engage outside counsel on a noncontingent fee basis to assist the Attorney General in cases to which the state is a party when, in his opinion, the interest of the state requires it, subject to the action of the Legislature in providing compensation for such services not to exceed recognized bar rates for similar services.

(2)(a) The Attorney General is hereby authorized and empowered to appoint and employ outside counsel, on a fee or salary basis not to exceed recognized bar rates for similar services, to assist the Attorney General in the preparation for, prosecution, or defense of any litigation in the state or federal courts or before any federal commission or agency in which the state is a party or has an interest. The Attorney General may designate the outside counsel as special assistant Attorney General.

(b) If the compensation agreed upon will be governed by a contingency fee contract, that contract must conform with the requirements of Section 7-5-8.

(3) The Attorney General may also employ special investigators on a per diem or salary basis, to be agreed upon at the time of employment, for the purpose of interviewing witnesses, ascertaining facts, or rendering any other services that may be needed by the Attorney General in the preparation for and prosecution of suits by or against the State of Mississippi, or in suits in which the Attorney General is participating on account of same being of statewide interest.

(4) The Attorney General may pay travel and other expenses of employees and appointees under this chapter in the same manner and amount as authorized by law for the payment of travel and expenses of state employees and officials.

(5) The compensation of appointees and employees under this chapter shall be paid out of the Attorney General's contingent fund, or out of any other funds appropriated to the Attorney General's office.

SOURCES: Codes, 1880, § 2643; 1892, § 2166; 1906, § 2382; Hemingway's 1917, § 4774; 1930, § 3677; Laws, 1942, §§ 3829.5, 3848; Laws, 1958, ch. 290, § 1; Laws, 2012, ch. 546, § 3, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment rewrote this section.

§ 7-5-8. Congtingent fee contracts with outside counsel.

(1) Before entering into a contingency fee contract with outside counsel, the state, an arm or agency of the state, or a statewide elected officer acting in his official capacity must first make a written determination that contingency fee representation is both cost-effective and in the public interest. The required written determination shall include specific findings for each of the following factors:

(a) Whether there exist sufficient and appropriate legal and financial resources within the Attorney General's office to handle the matter.

(b) The time and labor required; the novelty, complexity, and difficulty of the questions involved; and the skill requisite to perform the attorney services properly.

(c) The geographic area where the attorney services are to be provided.

(d) The amount of experience desired for the particular kind of attorney services to be provided and the nature of the outside attorney's experience with similar issues or cases.

(2)(a) The state, an arm or agency of the state, or a statewide elected officer acting in his official capacity may not enter into a contingency fee contract that provides for the outside attorney to receive a contingency fee, exclusive of reasonable costs and expenses incurred in connection with the case, which is in excess of the following:

(i) Twenty-five percent (25%) of any recovery of up to Ten Million Dollars ($10,000,000.00); plus

(ii) Twenty percent (20%) of any portion of such recovery between Ten Million Dollars ($10,000,000.00) and Fifteen Million Dollars ($15,000,000.00); plus

(iii) Fifteen percent (15%) of any portion of such recovery between Fifteen Million Dollars ($15,000,000.00) and Twenty Million Dollars ($20,000,000.00); plus

(iv) Ten percent (10%) of any portion of such recovery between Twenty Million Dollars ($20,000,000.00) and Twenty-five Million Dollars (25,000,000.00); plus

(v) Five percent (5%) of any portion of such recovery exceeding Twenty-five Million Dollars ($25,000,000.00).

(b) Except as provided in subsection (3) of this section, a contingency fee shall not exceed an aggregate of Fifty Million Dollars ($50,000,000.00), exclusive of reasonable costs and expenses incurred in connection with the case, and irrespective of the number of lawsuits filed or the number of attorneys retained to achieve the recovery.

(c) A contingency fee shall not be based on penalties or civil fines awarded or any amounts attributable to penalties or civil fines.

(3) The limits on fees set forth in subsection (2) of this section shall not apply if:

(a) The state, an arm or agency of the state, or a statewide elected officer acting in his official capacity makes a written determination stating the reasons why a greater fee is necessary, proper, and in the best interests of the state in a particular case; and

(b) The Outside Counsel Oversight Commission approves any terms of the contingency contract that exceed the limits set forth in subsection (2) of this section.

(4) The Outside Counsel Oversight Commission shall consist of the Governor, the Lieutenant Governor, and the Secretary of State; actions of the commission shall be taken by majority vote. Appeal from a decision of the Outside Counsel Oversight Commission shall be to any court of competent jurisdiction.

(5)(a) Copies of any executed contingency fee contract and the applicable written determination to enter into a contingency fee contract with the outside attorney shall be posted on the Attorney General's website for public inspection within five (5) business days after the date the contract is executed unless the state, arm or agency of the state, or statewide elected officer retaining outside counsel makes a determination, subject to the approval of the Outside Counsel Oversight Commission, that to do so would negatively affect the state's interest, and shall remain posted on the website for the duration of the contingency fee contract, including any extensions or amendments to the contract.

(b) If the determination is made and duly approved that posting the contract will negatively affect the interests of the state, the contract will be posted on the Attorney General's website within five (5) days of the occurrence of the earliest of the following:

(i) Filing of the lawsuit for which the contract was executed;

(ii) Entry of appearance for any pending matter for which the contract was executed; or

(iii) From the time the outside attorney engages in any substantive action on behalf of the state relative to the subject matter for which the contract was executed.

(c) Any payment of contingency fees shall be posted on the Attorney General's website within fifteen (15) days after the payment of the contingency fees to the outside attorney and shall remain posted on the website for at least one (1) year after the date payment is made.

(6) An outside attorney under contract to provide services to the state on a contingency fee basis shall, from the inception of the contract until not less than four (4) years after the contract expires or is terminated, maintain detailed current records, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the providing of attorney services. In addition, the outside attorney shall maintain detailed contemporaneous time records for the attorneys and paralegals working on the matter in increments of no greater

than one-tenth (1/10) of an hour, and shall promptly provide these records to the Attorney General upon request.

(7)(a) If an arm or agency of the state or a statewide elected officer contracts for outside legal counsel pursuant to Section 7-5-39(3) on a contingency fee basis, the arm or agency of the state or the statewide elected officer shall provide complete and timely information to the Office of the Attorney General as to every requirement of this section for inclusion in the report under this section. The Office of the Attorney General shall post the information as received on its website within five (5) days of receipt.

(b) The arm or agency of the state or statewide elected official responsible for retaining outside counsel shall provide complete and timely information to the Office of the Attorney General as to every requirement of Section 7-5-21 for inclusion in the docket required by that section.

SOURCES: Laws, 2012, ch. 546, § 4, eff from and after July 1, 2012.

§ 7-5-21. To keep a docket.

The Attorney General shall keep a docket of all causes in which he is required to appear, whether through his office or through outside counsel, which is a public record and must show the full style of the case, the cause number of the action, the county, district and court in which the causes have been instituted and tried, and whether the case is civil or criminal. If civil, the docket must show the nature of the demand, the stage of the proceedings, the name and address of any outside counsel, a description of the fee arrangement with any outside counsel, a memorandum of the judgment when prosecuted to judgment, any process issued thereon, whether satisfied or not, and if not satisfied, the return of the sheriff. If criminal, the docket must show the nature of the crime, the mode of prosecution, the stage of the proceedings, a memorandum of the sentence when prosecuted to a sentence, the execution thereof, if executed, and, if not executed, the reasons of delay or prevention.

SOURCES: Codes, 1892, § 181; 1906, § 187; Hemingway's 1917, § 3475; 1930, § 3661; 1942, § 3832; Laws, 2012, ch. 546, § 5, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment rewrote the first sentence, which read: "The attorney general shall keep a docket of all causes in which he is required to appear, which must at all reasonable times be open to the inspection of the public and must show the county, district, and court in which the causes have been instituted and tried, and whether they be civil or criminal"; and inserted "the name and address of any outside counsel, a description of the fee arrangement with any outside counsel" in the second sentence.

§ 7-5-25. To give opinions in writing.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by

the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 27-3-4 provides that the terms " 'Chairman of the Mississippi State Tax Commission,' 'Chairman of the State Tax Commission,' "Chairman of the Tax Commission' and 'chairman' appearing in the laws of this state in connection with the performance of the duties and functions by the Chairman of the Mississippi State Tax Commission, the Chairman of the State Tax Commission or the Chairman of the Tax Commission shall mean the Commissioner of Revenue of the Department of Revenue."

ATTORNEY GENERAL OPINIONS

Pursuant to Section 7-5-25, opinions of the Attorney General are issued on questions of state law for future guidance of those entitled to receive them; an Attorney General's opinion can neither validate nor invalidate a past action of an officer or agency, and operates prospectively only. Cardin, Nov. 15, 2002, A.G. Op. #02-0662.

Opinions of the Attorney General are issued on questions of law for the future guidance of those officials entitled to receive them. An Attorney General's opinion can neither validate nor invalidate past action of an officer or agency. Little, June 6, 2003, A.G. Op. 03-0263.

If a constable requests and receives an official opinion from the attorney general, the constable, as the requestor, would be shielded from civil and criminal liability if, in good faith, the constable acted in accordance with the opinion. Smith, Aug. 11, 2006, A.G. Op. 06-0310.

There is no authority for a county to pay delinquent land taxes or to bid on or purchase real property at a county tax sale. Hudson, February 9, 2007, A.G. Op. #07-00038, 2007 Miss. AG LEXIS 19.

If acts of a student, although not rising to the level of a felony, are such that the student poses a threat to the safety of himself or others or will disrupt the educational process at the Alternative School, then the School Board may remove the student from the school system altogether. If a compulsory-school-age child is expelled from the Alternative School for criminal or violent behavior, the school district must refer the case to the youth court if probable cause exists. Maples, February 2, 2007, A.G. Op. #07-00025, 2007 Miss. AG LEXIS 1.

A homestead exemption claimant who is a bona fide resident of Mississippi, who owns and is occupying a home legally assessed on the land roll, but is displaying a license plate from another state on a vehicle, should be removed from the homestead exemption roll until such time he or she submits proof of full compliance with the Mississippi road and bridge privilege tax laws. Schrimpshire, March 30, 2007, A.G. Op. #07-00162, 2007 Miss. AG LEXIS 65.

A full-time firefighter, like all other municipal officers and employees, is prohibited from being a commissioner of the municipal housing authority under Miss. Code Ann. § 43-33-7. The appointment of a spouse of a member of the board of aldermen as a commissioner of the municipal housing authority violates the Nepotism Statute, Miss. Code Ann. § 25-1-53, except that a person serving as commissioner prior to election of their spouse to the board of aldermen may be reappointed. Tucker, March 15, 2007, A.G. Op. #07-00130, 2007 Miss. AG LEXIS 103.

§ 7-5-39. To represent the state and state officers in suits; notice of civil legal action; retention of outside counsel under certain circumstances.

(1) Except as otherwise provided by law, the Attorney General shall represent the state, in person or by his assistant, as counsel in all suits against the state in other courts or the Supreme Court at the seat of government, and he shall, in like manner, act as counsel for any of the state officers in suits

brought by or against them in their official capacity, touching any official duty or trust.

(2) No civil legal action on behalf of the state, any arm or agency of the state, or any statewide elected officer acting in his official capacity may be taken until seven (7) working days' written notice of the proposed legal action is given to the statewide elected officer or proper person in charge of the arm or agency unless irreparable injury to the state would result by waiting for the expiration of the seven-day period.

(3)(a) The Attorney General shall authorize retention of independent counsel from outside his office by an arm or agency of the state or a statewide elected officer acting in his official capacity if the Attorney General declines representation when requested.

(b)(i) The Attorney General shall authorize retention of independent counsel from outside his office by an arm or agency of the state or a statewide elected officer acting in his official capacity and shall withdraw from representation of the arm or agency of the state or the statewide elected officer if there is a significant disagreement with the Attorney General as to the legal strategy to be used in the matter, and the Outside Counsel Oversight Commission has first approved the retention of outside counsel.

(ii) If an arm or agency of the state or statewide elected officer acting in his official capacity retains outside counsel under this subsection (3), the counsel shall be selected by the arm or agency of the state or the statewide elected officer. Fees of counsel employed on a fee basis shall not exceed recognized bar rates for similar services; any contract for outside counsel employed on a contingency fee basis shall conform to the provisions of Section 7-5-8.

(4) The Attorney General may pursue the collection of any claim or judgment in favor of the state outside of the state.

SOURCES: Codes, 1880, § 252; 1892, § 190; 1906, § 196; Hemingway's 1917, § 3484; 1930, § 3670; 1942, § 3841; Laws, 2012, ch. 546, § 6, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment rewrote the section, which formerly read: "The attorney general shall also represent the state, in person or by his assistant, as counsel in all suits against the state in other courts than the supreme court at the seat of government, and he shall, in like manner, act as counsel for any of the state officers in suits brought by or against them in their official capacity, touching any official duty or trust and triable at the seat of government. He may pursue the collection of any claim or judgment in favor of the state outside of the state."

§ 7-5-59. Investigation of official corruption, other white collar crimes, and computer crimes.

(1) The following terms shall have the meanings ascribed to them herein unless the context requires otherwise:

(a) "Computer crimes" means those crimes defined in Chapter 45 of Title 97 and sex offenses involving a computer affecting children as defined in Chapter 5 of Title 97.

(b) "White-collar crime and official corruption" includes crimes chargeable under the following provisions of law:

(i) Paragraphs (b) and (c) of Section 7-5-59(4), which relates to obstruction of white-collar crime investigations.

(ii) Section 97-7-10, which relates to the defrauding of state and local governments.

(iii) Section 97-19-73, which relates to fraud by mail, wire, radio or television.

(iv) Section 97-9-10, which relates to commercial bribery.

(v) Section 97-45-3, which relates to computer fraud.

(vi) Sections 97-11-25 through 97-11-31, which relate to embezzlement by public officials.

(vii) Section 97-11-33, which relates to extortion by public officials.

(viii) Sections 97-19-5 through 97-19-31, which relate to unlawful procurement or use of credit cards.

(ix) Sections 97-23-1 and 97-23-3, which relate to false, misleading or deceptive advertising.

(x) Sections 97-15-3 and 97-15-5, which relate to bribery of members and employees of the Highway Commission and the defrauding of the state by Highway Commission members, employees or highway contractors.

(xi) Section 97-9-5, which relates to bribery of jurors.

(xii) Sections 97-11-11, 97-11-13 and 97-11-53, which relate to acceptance of bribes by public officials and bribery of public officials.

(xiii) Sections 97-13-1 and 97-13-3, which relate to bribery of electors or election officials.

(xiv) Sections 97-23-19 through 97-23-27, which relate to embezzlement.

(c) "White-collar crime investigations" means an investigation into any illegal act or acts defined as white-collar crime.

(d) "Computer crimes investigations" means an investigation into any illegal act or acts defined as computer crime.

(e) "Person" means and includes not only an individual, but also a partnership, corporation, professional firm, nonprofit organization or other business entity.

(2) The Attorney General is hereby authorized to conduct official corruption investigations and such other white-collar crime investigations and computer crime investigations that are of statewide interest or which are in the protection of public rights.

(3)(a) In conducting white-collar crime and computer crime investigations, the Attorney General shall have the authority to issue and serve subpoenas to any person in control of any designated documents for the production of such documents, including, but not limited to, writings,

drawings, graphs, charts, photographs, phono-records, subscriber records and other data compilations from which information can be obtained, or translated through detection devices into reasonably usable form. Such subpoenas shall require the named person, his agent or attorney, to appear and deliver the designated documents to a location in the county of his residence unless the court for good cause shown directs that the subpoena be issued for the person to deliver such documents to a location outside of the county of his residence. Mere convenience of the Attorney General shall not be considered good cause. The Attorney General or his designee shall have the authority to inspect and copy such documents. Such subpoenas shall be issued only upon the ex parte and in camera application of the Attorney General to the circuit or chancery court of the county of residence of the person in control of the documents or the circuit or chancery court of the county where the person in control of the documents may be found, and only upon a showing that the documents sought are relevant to a criminal investigation under this act or may lead to the discovery of such relevant evidence. Thereafter said court shall have jurisdiction to enforce or quash such subpoenas and to enter appropriate orders thereon, and nothing contained in this section shall affect the right of a person to assert a claim that the information sought is privileged by law.

(b) A subpoena issued pursuant to this subsection shall be in substantially the following form:

"SUBPOENA TO PRODUCE DOCUMENTS PURSUANT TO AN INVESTIGATION BY THE ATTORNEY GENERAL

TO:

YOU ARE HEREBY COMMANDED to appear before the Attorney General of the State of Mississippi or his designated staff attorney at the place, date and time specified below in an investigation being conducted by the Attorney General pursuant to Section 7-5-59, Mississippi Code of 1972:
Place _____ Date and Time _____

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).

You are advised that the _____ Court of the _____ Judicial District of _____ County, Mississippi, has approved the ex parte and in camera application of the Attorney General to issue this subpoena, and jurisdiction to enforce and/or quash the subpoena and to enter appropriate orders thereon is statutorily vested in the said court; enforcement and penal provisions applicable to an Attorney General's investigation include those set forth in Section 7-5-59(4), Mississippi Code of 1972; and disclosure of testimony and/or records coming into possession of the Attorney General pursuant to this subpoena shall be limited by and subject to the provisions of Section 7-5-59(6), Mississippi Code of 1972, (for informational purposes, these cited statutes are reproduced on the reverse side of this subpoena).

You may wish to consult an attorney in regard to this subpoena. You have certain state and federal constitutional rights, including your protection against self-incrimination and unreasonable search and seizure which this subpoena may affect.

ISSUED BY AND UNDER SEAL OF THE ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI, this the _____ day of _____ , 20 ____.

(SEAL) _____"

(c) Following service of any subpoena, pursuant to the provisions of this subsection, a record of the return shall be made and kept by the Attorney General and subject only to such disclosure as may be authorized pursuant to the provisions of this section.

(4) Enforcement and penal provisions applicable to an investigation under this section shall include the following:

(a) If a person who has been served with a subpoena, which has been issued and served upon him in accordance with the provisions of this section, shall fail to deliver or have delivered the designated documents at the time and place required in the subpoena, on application of the Attorney General the circuit or chancery court having approved the issuance of the subpoena may issue an attachment for such person, returnable immediately, or at such time and place as the court may direct. Bond may be required and fine imposed and proceedings had thereon as in the case of a subpoenaed witness who fails to appear in circuit or chancery court.

(b) Every person who shall knowingly and willfully obstruct, interfere with or impede an investigation under this section by concealing or destroying any documents, papers or other tangible evidence which are relevant to an investigation under this section shall be guilty of a felony and, upon conviction, shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment.

(c) Every person who shall knowingly and willfully endeavor, by means of bribery, force or intimidation, to obstruct, delay or prevent the communication of information to any agent or employee of the Office of the Attorney General or who injures another person for the purpose of preventing the communication of such information or an account of the giving of such information relevant to an investigation under this section shall be guilty of a felony and, upon conviction, shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment.

(d) The provisions of paragraphs (a), (b) and (c) of this subsection shall not prohibit the enforcement of, or prosecution under, any other statutes of this state.

(5)(a) If any person shall refuse, or is likely to refuse, on the basis of his privilege against self-incrimination, produce the designated documents as requested by a subpoena issued under this section or issued by a court, the Attorney General may request the court, ex parte and in camera, to issue an order requiring such person to produce the documents information which he

refuses to give or provide on the basis of his privilege against self-incrimination. The Attorney General may request said order under this subsection when, in his judgment:

(i) The documents sought from such individual may be necessary to the public interest; and

(ii) Such individual has refused or is likely to refuse to produce the designated document on the basis of his privilege against self-incrimination.

Following such request, an order shall issue in accordance with this section requiring such person to produce the documents which he refuses to produce on the basis of his privilege against self-incrimination.

(b) Whenever a witness refuses, on the basis of his privilege against self-incrimination, to produce documents, and the court issues to the witness an order under paragraph (a) of this subsection, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination, but no documents or information compelled under the aforesaid order, or any information directly or indirectly derived from such documents may be used against the witness in any criminal proceeding, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

(6) Documents in the possession of the Attorney General gathered pursuant to the provisions of this section and subpoenas issued by him shall be maintained in confidential files with access limited to prosecutorial and other law enforcement investigative personnel on a "need-to-know" basis and shall be exempt from the provisions of the Mississippi Public Records Act of 1983, except that upon the filing of an indictment or information, or upon the filing of an action for recovery of property, funds or fines, such documents shall be subject to such disclosure as may be required pursuant to the applicable statutes or court rules governing the trial of any such judicial proceeding.

(7) No person, including the Attorney General, a member of his staff, prosecuting attorney, law enforcement officer, witness, court reporter, attorney or other person, shall disclose to an unauthorized person documents, including subpoenas issued and served, gathered by the Attorney General pursuant to the provisions of this section, except that upon the filing of an indictment or information, or upon the filing of an action for recovery of property, funds or fines, or in other legal proceedings, such documents shall be subject to such disclosure as may be required pursuant to applicable statutes and court rules governing the trial of any such judicial proceeding. In event of an unauthorized disclosure of any such documents gathered by the Attorney General pursuant to the provisions of this section, the person making any such unauthorized disclosure shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or imprisonment of not more than six (6) months, or by both such fine and imprisonment.

(8) The powers of the Attorney General under this section shall not diminish the powers of local authorities to investigate or prosecute any type of

white-collar crime violation, computer crime violation or any other criminal conduct within their respective jurisdictions, and the provisions of this section shall be in addition to the powers and authority previously granted the Attorney General by common, constitutional, statutory or case law.

(9) No person, agent or employee upon whom a subpoena is served pursuant to this section shall disclose the existence of the investigation to any person unless such disclosure is necessary for compliance with the subpoena. Any person who willfully violates this subsection shall be guilty of a misdemeanor and may be confined in the county jail for a period not to exceed one (1) year or fined not more than Ten Thousand Dollars ($10,000.00), or both.

SOURCES: Former § 7-5-59 [Codes, 1942, § 3828-11; Laws, 1964, ch. 331; Laws, 1968, ch. 358, § 1] Repealed by Laws, 1981, § 58. New § 7-5-59 enacted by Laws, 1988, ch. 511, § 1; Laws, 2009, ch. 387, § 1, eff from and after July 1, 2009.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the fourth paragraph of (3)(b). The word "atutes " was changed to "statutes" in the last sentence. The Joint Committee ratified the correction at its July 13, 2009, meeting.

Amendment Notes — The 2009 amendment, in (1), added (a), redesignated former (a) and (b) as present (b) and (c), added (d), and redesignated former (c) as present (e); inserted "and computer crime investigations" in (2); in the first sentence of (3)(a), inserted "and computer crime" and "subscriber records," and made a minor punctuation change; inserted "computer crime violation" in (8); and added (9).

INSURANCE INTEGRITY ENFORCEMENT BUREAU

Sec.
7-5-311. Repealed.

§ 7-5-301. Insurance Integrity Enforcement Bureau; creation; purpose.

SOURCES: Laws, 1998, ch. 561, § 1; reenacted without change, Laws, 2000, ch. 424, § 1; reenacted without change, Laws, 2003, ch. 439, § 1, eff from and after July 1, 2003.

Editor's Note — This section was reenacted without change by Laws, 2003 of ch. 439, § 1, eff from and after July 1, 2003. Since the language of the section as it appears in the parent volume is unaffected by the reenactment, it is not reprinted in this supplement as directed by the State Attorney General.

Amendment Notes — The 2003 amendment reenacted the section without change.

§ 7-5-303. Definitions; prohibited activities.

SOURCES: Laws, 1998, ch. 561, § 2; reenacted without change, Laws, 2000, ch. 424, § 2; reenacted without change, Laws, 2003, ch. 439, § 2, eff from and after July 1, 2003.

Editor's Note — This section was reenacted without change by Laws, 2003 of ch. 439, § 2, eff from and after July 1, 2003. Since the language of the section as it appears in the parent volume is unaffected by the reenactment, it is not reprinted in this supplement as directed by the State Attorney General.

Amendment Notes — The 2003 amendment reenacted the section without change.

§ 7-5-305. Funding; formula; use of monies.

SOURCES: Laws, 1998, ch. 561, § 3; reenacted without change, Laws, 2000, ch. 424, § 3; reenacted without change, Laws, 2003, ch. 439, § 3, eff from and after July 1, 2003.

Editor's Note — This section was reenacted without change by Laws of 2003, ch. 439, § 3, eff from and after July 1, 2003. Since the language of the section as it appears in the parent volume is unaffected by the reenactment, it is not reprinted in this supplement as directed by the State Attorney General.

Amendment Notes — The 2003 amendment reenacted the section without change.

§ 7-5-307. Whistleblowers; information to be provided; investigations; prosecution of violations; notice of disposition of files; report.

SOURCES: Laws, 1998, ch. 561, § 4; reenacted without change, Laws, 2000, ch. 424, § 4; reenacted without change, Laws, 2003, ch. 439, § 4, eff from and after July 1, 2003.

Editor's Note — This section was reenacted without change by Laws of 2003, ch. 439, § 4, eff from and after July 1, 2003. Since the language of the section as it appears in the parent volume is unaffected by the reenactment, it is not reprinted in this supplement as directed by the State Attorney General.

Amendment Notes — The 2003 amendment reenacted the section without change.

§ 7-5-309. Violations; offenses; penalties; assessment of costs.

SOURCES: Laws, 1998, ch. 561, § 5; reenacted without change, Laws, 2000, ch. 424, § 5; reenacted without change, Laws, 2003, ch. 439, § 5, eff from and after July 1, 2003.

Editor's Note — This section was reenacted without change by Laws of 2003, ch. 439, § 5, eff from and after July 1, 2003. Since the language of the section as it appears in the parent volume is unaffected by the reenactment, it is not reprinted in this supplement as directed by the State Attorney General.

Amendment Notes — The 2003 amendment reenacted the section without change.

§ 7-5-311. Repealed.

Repealed by Laws, 2003, ch. 439, § 6, eff from and after July 1, 2003.

[Laws, 1998, ch. 561, § 6; Laws, 2000, ch. 424, § 6, eff from and after July 1, 2000.]

Editor's Note — Former § 7-5-311 repealed §§ 7-5-301 through 7-5-311.

CHAPTER 7

State Fiscal Officer; Department of Audit

Article 1.

State Fiscal Officer.

§ 7-7-1. Definitions.

JUDICIAL DECISIONS

1. Entities subject to auditor oversight.

Where plaintiff Mississippi Veterans Home Purchase Board, a former mortgage lender, filed suit against defendant insurer in state court and the insurer removed the action, because the board was initially state-funded and nothing prevented further such apportionments, the board was an arm of the state and not a "citizen" under 28 U.S.C.S. § 1332 for diversity jurisdiction. Miss. Veterans Home Purchase Bd. v. State Farm Fire & Cas. Co., 492 F. Supp. 2d 579 (S.D. Miss. 2007).

§ 7-7-2. Transfer of functions of state fiscal management board to state fiscal officer.

Editor's Note — Section 23-5-215 referred to in subsection (2) was repealed by Laws, 1986, ch. 495, § 335, eff from and after January 1, 1987.

§ 7-7-27. Filing claims or invoices of purchases, services, etc.; waiver of certification that goods or services received under certain circumstances.

All claims against the state as the result of purchases, services, salaries, travel expense, or other encumbrances made or liabilities incurred by any officer, department, division, board, commission, institution or other agency of the state authorized to incur such obligations, whether as the result of the issuance of purchase orders, as hereinabove provided, or not, shall be filed with, certified and approved by the agency incurring such obligation pursuant to rules and regulations established by the Department of Finance and Administration. These rules and regulations shall set forth certain circumstances where certification by the approving officers that the goods and services have been received or performed may be waived by the Department of

Finance and Administration. Such waivers may pertain to, but should not be limited to, service contracts of limited time periods for lease of office space and equipment, computer software and subgrantee disbursements under federal grant programs.

SOURCES: Codes, 1942, § 3852-14; Laws, 1962, ch. 483, § 14; Laws, 1984, ch. 488, § 103; Laws, 1989, ch. 532, § 12; Laws, 1990, ch. 323, § 1; Laws, 1990, ch. 387, § 1; Laws, 1994, ch. 391, § 3; Laws, 2012, ch. 445, § 1, eff from and after July 1, 2012.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section. The subsection "(1)" designation was deleted from the beginning of the section (the section had a (1) but no (2)). The Joint Committee ratified the correction at its August 16, 2012 meeting.

Amendment Notes — The 2012 amendment in (1), substituted "shall be filed with, certified and approved by the agency icurring such obligation pursuant to rules and regulations established by the Department of Finance and Administration" for "shall first be filed with the agency incurring such obligation in such number of copies as the Department of Finance and Administration may prescribe" at the end of the first sentence, added the second sentence, deleted former sentences which read: "Such invoices shall be approved for payment by the proper officials of each agency and the original copy thereof forwarded to the Department of Finance and Administration, together with a requisition for payment containing a certification by the approving officer of each agency that the goods or services specified on each invoice have been received or performed, and any other documents required by the Department of Finance and Administration in order to ensure that the expenditure is regular, legal and correct, and that the claim has not been previously paid, and that the goods have been received in proper form. The Department of Finance and Administration may waive, under certain circumstances, the requirement that an original invoice be submitted to the department. The invoices shall show on their face the number of the purchase order previously issued covering the goods or services ordered, so that the Department of Finance and Administration may compare the same and make proper entries on the encumbrance record in the Department of Finance and Administration's office, or for electronically submitted purchase orders, the Department of Finance and Administration may edit the same and approve the entry for the state's general ledger. The certification by the approving officers that the goods and services have been received or performed may be waived in certain circumstances pursuant to rules and regulations established by the Department of Finance and Administration"; and deleted former (2), which read: "The State Fiscal Officer may approve electronically submitted payment vouchers, thereby recording the expenditure and issuing the payment. For purposes of electronically submitted payment vouchers, the State Fiscal Officer may exempt agencies from furnishing a copy of the payment voucher to the State Fiscal Officer as required in subsection (1) of this section."

§ 7-7-39. Warrants to be drawn within appropriation or budget.

The State Fiscal Officer shall not draw warrants without, or in excess of, appropriations of money for the purpose, except in those cases specifically provided for by law; nor shall the State Fiscal Officer draw warrants against budgeted funds until notified by certification that the budget for the current allotment period of the fiscal year for the department, institution, or agency

concerned is in compliance with the appropriation, and the amount of the approved budget has been set up in the State Fiscal Officer's records; nor shall the State Fiscal Officer draw warrants in excess of the amount so budgeted and approved, nor shall the State Fiscal Officer draw any warrant in excess of the cash balance then available in the particular fund against which the warrant is chargeable unless the warrant is to be drawn against federal programs in which federal funds are receipted based upon policies and procedures as established by the State Fiscal Officer or in other situations as deemed necessary by the State Fiscal Officer.

SOURCES: Codes, 1942, § 3852-20; Laws, 1962, ch. 483, § 20; Laws, 1970, ch. 517, § 1; Laws, 1984, ch. 488, § 109; Laws, 1989, ch. 532, § 18; Laws, 1992, ch. 359, § 1; Laws, 2012, ch. 397, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment substituted "policies and procedures as established by the State Fiscal Officer or in other situations as deemed necessary by the State Fiscal Officer" for "established warrant clearing patterns" at the end of the paragraph; and made minor stylistic changes.

§ 7-7-43. Warrants not to be issued to state's debtors; notice for state tax claim; liability for disregard of notice.

JUDICIAL DECISIONS

2. Set-offs.

Because under Miss. Code Ann. §§ 75-9-203, 75-9-322, the first perfected security interest had priority, plaintiff, a receiver for the receivership entities, on behalf of the entities' creditor who filed first, had priority over a state tax lien such that defendant state taxing authority's distress warrants issued against the entities' accounts receivable were quashed, and, because Miss. Code Ann. § 7-7-43 dealt with tax liabilities, not contractual debts owed by the state, the state had no right to a setoff. Nabers v. Morgan, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 10504 (S.D. Miss. Feb. 2, 2011).

§ 7-7-49. Purpose and intent of Sections 7-7-1 through 7-7-65.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 7-7-67. Investigation of fiscal officers and depositories.

JUDICIAL DECISIONS

1. Right to Bring Suit.

Miss. Code Ann. §§ 7-7-67 or 7-7-71 do not bestow exclusive authority to the Mississippi State Auditor alone to bring suits against the Mississippi State Tax Commission challenging the diversion of state sales tax funds to municipalities. City of Belmont v. Miss. State Tax Comm'n, 860 So. 2d 289 (Miss. 2003).

§ 7-7-71. Examination of records of public officers.

JUDICIAL DECISIONS

1. Right to Bring Suit.

Miss. Code Ann. §§ 7-7-67 or 7-7-71 do not bestow exclusive authority to the Mississippi State Auditor alone to bring suits against the Mississippi State Tax Commission challenging the diversion of state sales tax funds to municipalities. City of Belmont v. Miss. State Tax Comm'n, 860 So. 2d 289 (Miss. 2003).

§ 7-7-81. Audits of entities and their use of American Recovery and Reinvestment Act of 2009 funds; Auditor's Enhanced Accountability Fund created.

(1) The State Auditor shall have the authority to preaudit or postaudit, conduct performance audits and reviews, investigate projects, entities and their use of any funds provided to the state or any of its agencies or subdivision, or any nonprofit organization, from the federal American Recovery and Reinvestment Act of 2009 and its successors. If sufficient resources are available, the State Auditor shall maintain an official Web site and provide public access to copies of audit reports of state and local government entities receiving funds from the American Recovery and Reinvestment Act and its successors. The State Auditor shall have the authority to recover costs associated with auditing and investigating such projects and funds within the limits of federal law from any such entity that receives such funds. In addition, the State Auditor shall have the authority to contract with qualified certified public accounting firms to perform selected engagements under this section, if funds are made available for such contracts by the Legislature, the governmental entities covered by this section or by the federal government. All files, working papers, notes, correspondence and any other data compiled by the audit firms in connection with the engagements shall be available upon request, without cost, to the State Auditor for examination and abstracting during the normal business hours of any business day.

(2) A special fund, to be designated as the "Auditor's Enhanced Accountability Fund," shall be created within the State Treasury. The fund shall be maintained by the State Treasurer as a separate and special fund, separate and apart from the General Fund of the state. Initial funds shall be deposited from each governing entity receiving American Recovery and Reinvestment Act monies based on a sliding scale to be determined by the State Auditor. Subsequent and additional funds may be deposited from any source made available to the Department of Audit for such purposes. Unexpended American Recovery and Reinvestment Act monies remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited into such fund, but shall be held to pay for postaudit and investigative costs related to American Recovery and Reinvestment Act expenditures and programs. Monies deposited into the fund shall be disbursed, in the discretion of the State

Auditor, to pay the allowable costs of additional preaudit, postaudit, investigative, or other allowable or accountability requirements not funded through regular appropriations or special fund billing provided in this section. Monies in the special fund may be used to reimburse reasonable actual and necessary costs incurred by the State Auditor to accomplish objectives under this section. The State Auditor shall maintain a specific accounting of actual costs incurred for each project for which reimbursements are sought and shall provide a report to the Legislature within sixty (60) days from the end of each fiscal year regarding the nature and amounts of all expenditures. The Department of Audit may escalate its budget and expend such funds in accordance with rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds.

SOURCES: Laws, 2009, ch. 546, § 22, eff from and after passage (approved Apr. 15, 2009.)

Federal Aspects — American Recovery and Reinvestment Act, see Public Law 111-5, 123 Stat. 115.

ARTICLE 3.

DEPARTMENT OF AUDIT.

SEC.

§ 7-7-204. Paid internship program for certain students working toward a bachelor's or master's degree in accounting; eligibility requirements; liability of recipients who fail to complete coursework or degree or fail to work as auditor at Office of State Auditor for requisite period of time.

(1) Within the limits of the funds available to the Office of the State Auditor for such purpose, the State Auditor may grant a paid internship to students pursuing junior or senior undergraduate-level year coursework toward a bachelor's degree in accounting or graduate-level coursework toward a master's degree in accounting. Those applicants deemed qualified shall receive funds that may be used to pay for tuition, books and related fees to pursue their degree. It is the intent of the Legislature that the paid internship program (hereinafter referred to as the program) shall be used as an incentive

for accounting students to develop job-related skills and to encourage accounting careers at the Office of the State Auditor.

(2) In order to be eligible for the program, an applicant must:

(a) Attend any college or school approved and designated by the Office of the State Auditor.

(b) Satisfy the following conditions:

(i) Undergraduate stipulations: Applicants must have successfully obtained a minimum of fifty-eight (58) semester hours toward a bachelor of science degree in accounting from a Mississippi institution of higher learning.

Applicants must have achieved a minimum Grade Point Average (GPA) on the previously obtained semester hours toward a bachelor of science degree in accounting of 3.0 on a 4.0 scale.

If accepted into the program, participants shall maintain a minimum cumulative GPA of 3.0 on a 4.0 scale in all coursework counted toward a bachelor of science degree in accounting.

(ii) Graduate stipulations: Applicants must have met the regular admission standards and have been accepted into the master of science accounting program at a Mississippi institution of higher learning.

If accepted into the program, participants shall maintain a minimum cumulative GPA of 3.0 on a 4.0 scale in all coursework counted toward a master of science degree in accounting.

(c) All program participants will be required to work a total of three hundred thirty-six (336) hours each summer at the Office of the State Auditor in Jackson, Mississippi.

(d) Agree to work as an auditor at the Office of the State Auditor upon graduation for a period of time equivalent to the period of time for which the applicant receives compensation, calculated to the nearest whole month, but in no event less than two (2) years.

(3)(a) Before being placed into the program, each applicant shall enter into a contract with the Office of the State Auditor, which shall be deemed a contract with the State of Mississippi, agreeing to the terms and conditions upon which the internship shall be granted to him. The contract shall include such terms and provisions necessary to carry out the full purpose and intent of this section. The form of such contract shall be prepared and approved by the Attorney General of this state, and shall be signed by the State Auditor of the Office of the State Auditor and the participant.

(b) Upon entry into the program, participants will become employees of the Office of the State Auditor during their time in the program and shall be eligible for benefits such as medical insurance paid by the agency for the participant; however, in accordance with Section 25-11-105II(b), those participants shall not become members of the Public Employees' Retirement System while participating in the program. Participants shall not accrue personal or major medical leave while they are in the program.

(c) The Office of the State Auditor shall have the authority to cancel any contract made between it and any program participant upon such cause being deemed sufficient by the State Auditor.

(d) The Office of the State Auditor is vested with full and complete authority and power to sue in its own name any participant for any damages due the state on any such uncompleted contract, which suit shall be filed and handled by the Attorney General of the state. The Office of the State Auditor may contract with a collection agency or banking institution, subject to approval by the Attorney General, for collection of any damages due the state from any participant. The State of Mississippi, the Office of the State Auditor and its employees are immune from any suit brought in law or equity for actions taken by the collection agency or banking institution incidental to or arising from their performance under the contract. The Office of the State Auditor, collection agency and banking institution may negotiate for the payment of a sum that is less than full payment in order to satisfy any damages the participant owes the state, subject to approval by the director of the sponsoring facility within the Office of the State Auditor.

(4)(a) Any recipient who is accepted into the program by the Mississippi Office of the State Auditor and who fails to complete undergraduate- or graduate-level coursework toward a degree in accounting, or withdraws from school at any time before completing his or her education, shall be liable to repay the Office of the State Auditor for all monies received during the time the recipient was in the program, at the rate of pay received by the employee while in the program, including benefits paid by the agency for the participant, and monies received for tuition, books and related fees used to pursue their degree with interest accruing at ten percent (10%) per annum from the date the recipient failed or withdrew from school. The recipient also will not be liable for repayment for any money earned during the required summer hours. This money shall be considered earned by the recipient at the federal minimum wage rate.

(b) All paid internship compensation received by the recipient while in school shall be considered earned conditioned upon the fulfillment of the terms and obligations of the paid internship contract and this section. However, no recipient of the paid internship shall accrue personal or major medical leave while the recipient is pursuing junior or senior undergraduate-level year coursework toward a bachelor's degree in accounting or graduate-level coursework toward a master's degree in accounting. The recipient shall not be liable for liquidated damages.

(c) If the recipient does not work as an auditor at the Office of the State Auditor for the period required under subsection (2)(d) of this section, the recipient shall be liable for repayment on demand of the remaining portion of the compensation that the recipient was paid while in the program which has not been unconditionally earned, with interest accruing at ten percent (10%) per annum from the recipient's date of graduation or the date that the recipient last worked at the Office of the State Auditor, whichever is the later date. In addition, there shall be included in any contract for paid student internship a provision for liquidated damages equal to Five Thousand Dollars ($5,000.00) which may be reduced on a pro rata basis for each year served under such contract.

SOURCES: Laws, 2008, ch. 558, § 4; Laws, 2009, ch. 546, § 1, eff from and after passage (approved Apr. 15, 2009.)

Amendment Notes — The 2009 amendment deleted "Applicants must have obtained a bachelor of science degree in accounting from an institution of higher learning" following "Graduate stipulations" in (2)(b)(ii); and substituted "however, in accordance with Section 25-11-105II(b)...while participating in the program" for "and PERS Retirement Credit for time served in the program" in (3)(b).

§ 7-7-211. Powers and duties of department [Repealed effective July 1, 2015].

(1) The department shall have the power and it shall be its duty:

(a) To identify and define for all public offices of the state and its subdivisions generally accepted accounting principles or other accounting principles as promulgated by nationally recognized professional organizations and to consult with the State Fiscal Officer in the prescription and implementation of accounting rules and regulations;

(b) To provide best practices, for all public offices of regional and local subdivisions of the state, systems of accounting, budgeting and reporting financial facts relating to said offices in conformity with legal requirements and with generally accepted accounting principles or other accounting principles as promulgated by nationally recognized professional organizations; to assist such subdivisions in need of assistance in the installation of such systems; to revise such systems when deemed necessary, and to report to the Legislature at periodic times the extent to which each office is maintaining such systems, along with such recommendations to the Legislature for improvement as seem desirable;

(c) To study and analyze existing managerial policies, methods, procedures, duties and services of the various state departments and institutions upon written request of the Governor, the Legislature or any committee or other body empowered by the Legislature to make such request to determine whether and where operations can be eliminated, combined, simplified and improved;

(d) To postaudit each year and, when deemed necessary, preaudit and investigate the financial affairs of the departments, institutions, boards, commissions or other agencies of state government, as part of the publication of a comprehensive annual financial report for the State of Mississippi. In complying with the requirements of thisparagraph, the department shall have the authority to conduct all necessary audit procedures on an interim and year-end basis;

(e) To postaudit and, when deemed necessary, preaudit and investigate separately the financial affairs of (i) the offices, boards and commissions of county governments and any departments and institutions thereof and therein; (ii) public school districts, departments of education and junior college districts; and (iii) any other local offices or agencies which share revenues derived from taxes or fees imposed by the State Legislature or receive grants from revenues collected by governmental divisions of the

state; the cost of such audits, investigations or other services to be paid as follows: Such part shall be paid by the state from appropriations made by the Legislature for the operation of the State Department of Audit as may exceed the sum of Thirty Dollars ($30.00) per man hour for the services of each staff person engaged in performing the audit or other service plus the actual cost of any independent specialist firm contracted by the State Auditor to assist in the performance of the audit, which sum shall be paid by the county, district, department, institution or other agency audited out of its general fund or any other available funds from which such payment is not prohibited by law. Costs paid for independent specialists or firms contracted by the State Auditor shall be paid by the audited entity through the State Auditor to the specialist or firm conducting the postaudit.

Each school district in the state shall have its financial records audited annually, at the end of each fiscal year, either by the State Auditor or by a certified public accountant approved by the State Auditor. Beginning with the audits of fiscal year 2010 activity, no certified public accountant shall be selected to perform the annual audit of a school district who has audited that district for three (3) or more consecutive years previously. Certified public accountants shall be selected in a manner determined by the State Auditor. The school district shall have the responsibility to pay for the audit, including the review by the State Auditor of audits performed by certified public accountants;

(f) To postaudit and, when deemed necessary, preaudit and investigate the financial affairs of the levee boards; agencies created by the Legislature or by executive order of the Governor; profit or nonprofit business entities administering programs financed by funds flowing through the State Treasury or through any of the agencies of the state, or its subdivisions; and all other public bodies supported by funds derived in part or wholly from public funds, except municipalities which annually submit an audit prepared by a qualified certified public accountant using methods and procedures prescribed by the department;

(g) To make written demand, when necessary, for the recovery of any amounts representing public funds improperly withheld, misappropriated and/or otherwise illegally expended by an officer, employee or administrative body of any state, county or other public office, and/or for the recovery of the value of any public property disposed of in an unlawful manner by a public officer, employee or administrative body, such demands to be made (i) upon the person or persons liable for such amounts and upon the surety on official bond thereof, and/or (ii) upon any individual, partnership, corporation or association to whom the illegal expenditure was made or with whom the unlawful disposition of public property was made, if such individual, partnership, corporation or association knew or had reason to know through the exercising of reasonable diligence that the expenditure was illegal or the disposition unlawful. Such demand shall be premised on competent evidence, which shall include at least one (1) of the following: (i) sworn statements, (ii) written documentation, (iii) physical evidence, or (iv) reports

and findings of government or other law enforcement agencies. Other provisions notwithstanding, a demand letter issued pursuant to thisparagraph shall remain confidential by the State Auditor until the individual against whom the demand letter is being filed has been served with a copy of such demand letter. If, however, such individual cannot be notified within fifteen (15) days using reasonable means and due diligence, such notification shall be made to the individual's bonding company, if he or she is bonded. Each such demand shall be paid into the proper treasury of the state, county or other public body through the office of the department in the amount demanded within thirty (30) days from the date thereof, together with interest thereon in the sum of one percent (1%) per month from the date such amount or amounts were improperly withheld, misappropriated and/or otherwise illegally expended. In the event, however, such person or persons or such surety shall refuse, neglect or otherwise fail to pay the amount demanded and the interest due thereon within the allotted thirty (30) days, the State Auditor shall have the authority and it shall be his duty to institute suit, and the Attorney General shall prosecute the same in any court of the state to the end that there shall be recovered the total of such amounts from the person or persons and surety on official bond named therein; and the amounts so recovered shall be paid into the proper treasury of the state, county or other public body through the State Auditor. In any case where written demand is issued to a surety on the official bond of such person or persons and the surety refuses, neglects or otherwise fails within one hundred twenty (120) days to either pay the amount demanded and the interest due thereon or to give the State Auditor a written response with specific reasons for nonpayment, then the surety shall be subject to a civil penalty in an amount of twelve percent (12%) of the bond, not to exceed Ten Thousand Dollars ($10,000.00), to be deposited into the State General Fund;

(h) To investigate any alleged or suspected violation of the laws of the state by any officer or employee of the state, county or other public office in the purchase, sale or the use of any supplies, services, equipment or other property belonging thereto; and in such investigation to do any and all things necessary to procure evidence sufficient either to prove or disprove the existence of such alleged or suspected violations. The Department of Investigation of the State Department of Audit may investigate, for the purpose of prosecution, any suspected criminal violation of the provisions of this chapter. For the purpose of administration and enforcement of this chapter, the enforcement employees of the Department of Investigation of the State Department of Audit have the powers of a law enforcement officer of this state, and shall be empowered to make arrests and to serve and execute search warrants and other valid legal process anywhere within the State of Mississippi. All enforcement employees of the Department of Investigation of the State Department of Audit hired on or after July 1, 1993, shall be required to complete the Law Enforcement Officers Training Program and shall meet the standards of the program;

(i) To issue subpoenas, with the approval of, and returnable to, a judge of a chancery or circuit court, in termtime or in vacation, to examine the

records, documents or other evidence of persons, firms, corporations or any other entities insofar as such records, documents or other evidence relate to dealings with any state, county or other public entity. The circuit or chancery judge must serve the county in which the records, documents or other evidence is located; or where all or part of the transaction or transactions occurred which are the subject of the subpoena;

(j) In any instances in which the State Auditor is or shall be authorized or required to examine or audit, whether preaudit or postaudit, any books, ledgers, accounts or other records of the affairs of any public hospital owned or owned and operated by one or more political subdivisions or parts thereof or any combination thereof, or any school district, including activity funds thereof, it shall be sufficient compliance therewith, in the discretion of the State Auditor, that such examination or audit be made from the report of any audit or other examination certified by a certified public accountant and prepared by or under the supervision of such certified public accountant. Such audits shall be made in accordance with generally accepted standards of auditing, with the use of an audit program prepared by the State Auditor, and final reports of such audits shall conform to the format prescribed by the State Auditor. All files, working papers, notes, correspondence and all other data compiled during the course of the audit shall be available, without cost, to the State Auditor for examination and abstracting during the normal business hours of any business day. The expense of such certified reports shall be borne by the respective hospital, or any available school district funds other than minimum program funds, subject to examination or audit. The State Auditor shall not be bound by such certified reports and may, in his or their discretion, conduct such examination or audit from the books, ledgers, accounts or other records involved as may be appropriate and authorized by law;

(k) The State Auditor shall have the authority to contract with qualified public accounting firms to perform selected audits required in paragraphs (d), (e), (f) and (j) of this section, if funds are made available for such contracts by the Legislature, or if funds are available from the governmental entity covered by paragraphs (d), (e), (f) and (j). Such audits shall be made in accordance with generally accepted standards of auditing. All files, working papers, notes, correspondence and all other data compiled during the course of the audit shall be available, without cost, to the State Auditor for examination and abstracting during the normal business hours of any business day;

(*l*) The State Auditor shall have the authority to establish training courses and programs for the personnel of the various state and local governmental entities under the jurisdiction of the Office of the State Auditor. The training courses and programs shall include, but not be limited to, topics on internal control of funds, property and equipment control and inventory, governmental accounting and financial reporting, and internal auditing. The State Auditor is authorized to charge a fee from the participants of these courses and programs, which fee shall be deposited into the

Department of Audit Special Fund. State and local governmental entities are authorized to pay such fee and any travel expenses out of their general funds or any other available funds from which such payment is not prohibited by law;

(m) Upon written request by the Governor or any member of the State Legislature, the State Auditor may audit any state funds and/or state and federal funds received by any nonprofit corporation incorporated under the laws of this state;

(n) To conduct performance audits of personal or professional service contracts by state agencies on a random sampling basis, or upon request of the State Personal Service Contract Review Board under Section 25-9-120(3).

(2) The provisions of this section shall stand repealed on July 1, 2015.

SOURCES: Codes, 1942, § 3877-05; Laws, 1948, ch. 202, § 5; Laws, 1952, ch. 176, § 5; Laws, 1960, ch. 375; Laws, 1968, ch. 496, § 1, ch. 497, § 1; Laws, 1979, ch. 512, § 2; Laws, 1982, ch. 466, § 2; Laws, 1984, ch. 450; Laws, 1985, ch. 455, § 2; Laws, 1986, ch. 488, § 3; Laws, 1989, ch. 427, § 1; Laws, 1989, ch. 459, § 1; Laws, 1989, ch. 532, § 33; Laws, 1994, ch. 332, § 1; Laws, 1995, ch. 336, § 1; Laws, 1997, ch. 609, § 6; Laws, 2003, ch. 316, § 1; Laws, 2004, ch. 461, § 1; Laws, 2004, ch. 562, § 1; Laws, 2008, ch. 558, § 1; Laws, 2009, ch. 516, § 4; Laws, 2009, ch. 538, § 2; Laws, 2012, ch. 567, § 1, eff from and after July 1, 2012.

Joint Legislative Committee Note — Section 1 of ch. 461, Laws of 2004, effective from and after July 1, 2004 (approved April 27, 2004), amended this section. Section 1 of ch. 562, Laws of 2004, effective from and after July 1, 2004 (approved May 27, 2004), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 8, 2004 meeting of the Committee.

Section 2 of ch. 538, Laws of 2009, effective from and after passage (approved on April 15, 2009), amended this section. Section 4 of ch. 516, Laws of 2009, effective from and after passage (approved April 8, 2009) also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the July 13, 2009, meeting of the Committee.

Editor's Note — The ending punctuation of (n) should be a period. The section is set out above as amended by Chapter 558, Laws of 2008.

Laws of 2009, ch. 516 § 1 provides:

"SECTION 1. This act shall be entitled and may be cited as the "Children First Act of 2009."

Amendment Notes — The 2003 amendment rewrote the next-to-last sentence in (h) in order to provide that enforcement employees of the Department of Investigation of the State Department of Audit shall be empowered to make arrests and to serve and execute search warrants and other valid legal process anywhere within the State of Mississippi.

The first 2004 amendment (ch. 461), in (g), inserted "or such surety" in the fourth sentence, added the last sentence, and made minor punctuation changes.

The second 2004 amendment (ch. 562) added (o).

The 2008 amendment substituted "To provide best practices" for "To prescribe" at the beginning of (b); substituted "Thirty Dollars ($30.00) per man hour" for "One Hundred Dollars ($100.00) per day" in (e); deleted "with the use of an audit program prepared by the State Auditor, and final reports of such audits shall conform to the format prescribed by the State Auditor" following "auditing" at the end of second sentence of (k); and deleted former (o), which related to the duty to annually postaudit the Chickasawhay Natural Gas District.

The first 2009 (ch. 516), amendment added the last paragraph of (e); substituted "paragraphs (d), (e) and (f)" for "subsections (d), (e) and (f)" both times it appears in (k); and made a minor stylistic change.

The second 2009 (ch. 538), amendment substituted "this paragraph" for "this subsection" in the first sentence of (d) and second sentence (g); and substituted "paragraphs (d), (e), (f) and (j)" for "subsections (d), (e) and (f) both times it appears in (k).

The 2012 amendment added the (1) designation at the beginning of the introductory language; in (1)(a) and (1)(b), inserted "or other accounting principles"; in (1)(e), in the first paragraph, inserted "plus the actual cost of any independent specialist firm contracted by the State Auditor to assist in the performance of the audit" near the end, and added the last sentence, and in the second paragraph, rewrote the first two sentences, which formerly read "Each school district in the state shall have its financial records audited annually, at the end of each fiscal year, either by the State Auditor or by a certified public accountant approved by the State Auditor, except that, beginning with audits of fiscal year 2010 activity, the State Auditor shall conduct the audit of each school district at least once every four (4) years. If financial and personnel resources are not made available to the State Auditor for the purpose of ensuring that school districts are audited by the State Auditor at least once every four (4) years then, beginning with the audits of fiscal year 2010 activity, no certified public accountant shall be selected to perform the annual audit of a school district who has audited that district for three (3) or more consecutive years previously."

ATTORNEY GENERAL OPINIONS

Planning and Development Districts are either public entities or instrumentalities of political subdivisions of the state and, as such, are subject to audit by the State Auditor. McLeod, Nov. 26, 2003, A.G. Op. 03-0573.

If an association, such as the Mississippi School Superintendents Association, or Mississippi School Board Association, administers programs financed by funds flowing through a political subdivision or political subdivisions, then the Department of Audit would be authorized to audit and investigate the association's financial affairs. Chaney, June 14, 2004, A.G. Op. 04-0228.

The mere receipt of dues from a public entity would not subject a nonprofit entity to the audit provisions of subsection (f) of this section. Clay, Jan. 24, 2005, A.G. Op. 04-0623.

The auditor has the discretion to conduct or not conduct an audit under subsection (m) of this section. Clay, Jan. 24, 2005, A.G. Op. 04-0623.

While it may be necessary, as part of a performance audit of the Department of Human Services, to examine the performance of subrecipients/subgrantees and providers of programs receiving CCDF and/or TANF funds, and "Designated Agents" of grants and other funds from the Department of Human Services, no provision of the law can be located authorizing the State Auditor or the State Department of Audit to bill Planning and

Development Districts directly for performance audit services. Bryant, May 27, 2005, A.G. Op. 05-0232.

The Office of the State Auditor can bill the Planning and Development Districts directly for actual costs/expenses for audits of subrecipients/subgrantees and providers of programs receiving CCDF and/or TANF funds from the Department of Human Services. Bryant, May 27, 2005, A.G. Op. 05-0232.

§ 7-7-213. Payment of costs of audits and other services [Repealed effective July 1, 2015] .

(1) The costs of audits and other services required by Sections 7-7-201 through 7-7-215, except for those audits and services authorized by Section 7-7-211(k) which shall be funded by appropriations made by the Legislature from such funds as it deems appropriate, shall be paid from a special fund hereby created in the State Treasury, to be known as the State Department of Audit Fund, into which will be paid each year the amounts received for performing audits required by law. Except as provided in Section 7-7-211(d) and any municipality required under this chapter to be audited by the State Auditor, the amounts to be charged for performing audits and other services shall be the actual cost, not to exceed Thirty Dollars ($30.00) per man hour plus the actual cost of any independent specialist firm contracted by the State Auditor to assist in the performance of the audit. Costs paid for independent specialists or firms contracted by the State Auditor shall be paid by the audited entity through the State Auditor to the specialist or firm conducting the audit. In the event of failure by any unit of government to pay the charges authorized herein, the Department of Audit shall notify the State Fiscal Officer, and upon a determination that the charges are substantially correct, the State Fiscal Officer shall notify the defaulting unit of his determination. If payment is not made within thirty (30) days after such notification, the State Fiscal Officer shall notify the State Treasurer and Department of Public Accounts that no further warrants are to be issued to the defaulting unit until the deficiency is paid.

(2) The cost of any service by the department not required of it under the provisions of the cited sections but made necessary by the willful fault or negligence of an officer or employee of any public office of the state shall be recovered (i) from such officer or employee and/or surety on official bond thereof and/or (ii) from the individual, partnership, corporation or association involved, in the same manner and under the same terms, when necessary, as provided the department for recovering public funds in Section 7-7-211.

(3) The State Auditor shall deliver a copy of any audit of the fiscal and financial affairs of a county to the chancery clerk of such county and shall deliver a notice stating that a copy of such audit is on file in the chancery clerk's office to some newspaper published in the county to be published. If no newspaper is published in the county, a copy of such notice shall be delivered to a newspaper having a general circulation therein.

(4) The provisions of this section shall stand repealed on July 1, 2015.

SOURCES: Codes, 1942, § 3877-06; Laws, 1948, ch. 202, § 6; Laws, 1952, ch. 176, § 6; Laws, 1979, ch. 512, § 3; Laws, 1984, ch. 488, § 123; Laws, 1985, ch. 455, § 3; Laws, 1989, ch. 459, § 2; Laws, 1989, ch. 532, § 34; Laws, 2008, ch. 558, § 2; Laws, 2012, ch. 567, § 2, eff from and after July 1, 2012.

Amendment Notes — The 2008 amendment substituted "Thirty Dollars ($30.00) per man hour" for "One Hundred Dollars ($100.00) per man day" in the first paragraph.

The 2012 amendment added the (1) through (3) designations; in (1), added "plus the actual cost of any independent specialist firm contracted by the State Auditor to assist in the performance of the audit" in the second sentence, and added the third sentence; and added (4).

§ 7-7-215. Reports; applicability of generally accepted auditing standards; retention of audit materials; access to records of entities subject to audit.

(1) Upon the completion of each audit, the department shall prepare a report which shall set forth the facts of such audit in the most comprehensive form, and the original copy of such report shall be filed in the office to which it pertains, as a permanent record; one (1) copy thereof shall be filed in the office of the department, subject to public inspection, and one (1) copy shall be preserved for use by the Governor and/or the Legislature. Other provisions notwithstanding, all work papers associated with an audit shall be confidential, but available to subsequent auditors engaged in performing the entities' subsequent audit. The director shall require such financial reports from every public office and taxing body as he may deem necessary and for such period as he may designate, and at the end of each fiscal year the State Auditor and director shall prepare and publish a report of comparative financial statistics covering all public offices of the state over which the department has accounting and auditing supervision. The Governor may direct the State Auditor and/or the director of the department to make any special report on any subject under their jurisdiction and make any special audit or investigation he may desire, such directives to be issued in writing.

(2) All audits conducted by the department shall be in accordance with generally accepted auditing standards, as promulgated by nationally recognized professional organizations. Audit and investigative reports, work papers and other evidence and related supportive material shall be retained and filed according to an agreement between the State Auditor and the Department of Archives and History. In conducting audits pursuant to this article, the department shall have access to all records, documents, books, papers and other evidence relating to the financial transactions of any governmental entity subject to audit by the department.

SOURCES: Codes, 1942, § 3877-07; Laws, 1948, ch. 202, § 7; Laws, 1952, ch. 176, § 7; Laws, 1986, ch. 488, § 5; Laws, 2009, ch. 546, § 2, eff from and after passage (approved Apr. 15, 2009.)

Amendment Notes — The 2009 amendment added subsection designations; in (1), deleted "or investigation" following "each audit" and "such audit" in the first sentence,

and substituted "but available to subsequent auditors engaged in performing the entities' subsequent audit" for "until the audit fieldwork has been completed and the chief executive officer of the entity being audited has been notified of any findings or exceptions" in the second sentence.

ATTORNEY GENERAL OPINIONS

It is within the discretion of the Board of the Greenwood Public School District to determine how best to file as a permanent record the State Auditor's Report of Investigation. From a practical standpoint, making the report a part of the minutes would comply with and achieve the purpose of Miss. Code Ann. § 7-7-215. Oakes, February 9, 2007, A.G. Op. #07-00023, 2007 Miss. AG LEXIS 18.

§ 7-7-225. Contract for legal services.

The State Auditor, when conducting agency audits, shall test to determine whether or not the state institutions of higher learning and any state agency which does not draw warrants on the Treasury have either received approval of the Attorney General or complied with the provisions of Section 7-5-39, with regard to any contract for legal services.

SOURCES: Laws, 1991, ch. 473 § 2; Laws, 2012, ch. 546, § 8, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment substituted "have either received approval of the Attorney General or complied with the provisions of Section 7-5-39, with regard to any contract for legal services" for "have received approval of the Attorney General for any contract for legal services" and made a minor grammatical change.

CHAPTER 9

State Treasurer

GENERAL PROVISIONS

§ 7-9-29. Payment of interest and bonds.

Editor's Note — Laws, 2005, 2nd Ex Sess, ch. 31, § 4 provides as follows:

"SECTION 4. Through June 30, 2006, the State Treasurer may transfer from any funds in the State Treasury an amount to pay the principal of and the interest on state general obligation bonds as they become due."

§ 7-9-43. Contracts with selected depositories.

The state institutions of higher learning and the Department of Human Services, after receiving the written approval of the State Fiscal Officer as provided in Section 7-9-41, shall select and make a contract with some bank to serve as a depository for funds of the same. Said bank so selected shall qualify to receive said fund and secure the same as required of state depositories under Section 27-105-5 before receiving any funds, except as herein noted in the case of private hospitals. The life of said contract with a depository shall be for five (5) years. Each bank shall enter into a written contract, the terms of which shall be to perform faithfully all acts and duties required of it by this and other laws of the state. As such depository, it shall receive and keep account of all funds and pay out same on the check of the secretary or business manager, countersigned by the president or chairman of the board or institution. Such bank shall receive, keep, disburse and account for all funds of the Department of Human Services and such state institution of higher learning for which it shall be a depository, and turn over all funds and accounts to its legal successor, provided all private hospitals shall be exempted from providing depositories.

All books, accounts and reports made thereon for any funds shall conform to the requirements of the General Accounting Office, and shall be filed with the said General Accounting Office.

SOURCES: Codes, 1930, § 7179; 1942, § 4308; Laws, 1926, ch. 169; Laws, 1962, ch. 499, § 2; Laws, 1979, ch. 468, § 2; Laws, 1984, ch. 488, § 137; Laws, 1989, ch. 532, § 47; Laws, 2011, ch. 382, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment substituted "five (5) years" for "two and one-half (2-½) years" in the third sentence; and substituted "Department of Human Services" for "State Department of Public Welfare" throughout the section.

SPECIAL TREASURY FUND

§ 7-9-70. Mississippi Fire Fighters Memorial Burn Center Fund established; deposits; investments; Mississippi Burn Care Fund.

(1) There is created and established in the State Treasury a special trust fund to be known as the "Mississippi Fire Fighters Memorial Burn Center Fund." There shall be deposited in such fund (a) all such fees as the State Treasurer is directed to deposit therein under subsection (4) of Section 27-19-56.1, under subsection (4) of Section 27-19-56.2 and under subsection (5)(b) of Section 27-19-56.4; and (b) any gift, donation, bequest, trust, grant, endowment, transfer of money or securities or any other monies from any source whatsoever as may be designated for deposit in the fund.

(2) The principal of the trust fund created under subsection (1) of this section shall remain inviolate and shall be invested as provided by law. Interest and income derived from investment of the principal of the trust fund may be appropriated by the Legislature and expended exclusively for the support and maintenance of the Mississippi Fire Fighters Memorial Burn Center.

(3) From and after June 17, 2005, there shall be created in the State Treasury a fund known as the Mississippi Burn Care Fund. The Mississippi Burn Care Fund shall be the Mississippi Fire Fighters Memorial Burn Center Fund and any reference to the Mississippi Fire Fighters Memorial Burn Center Fund in law shall mean the Mississippi Burn Care Fund. All funds payable to the Mississippi Fire Fighters Memorial Burn Center Fund shall, from and after June 17, 2005, be paid to the Mississippi Burn Care Fund. All balances in the Mississippi Fire Fighters Memorial Burn Center Fund and the Mississippi Fire Fighters Memorial Fire Fighters Burn Center Escrow Fund shall be transferred to the Mississippi Burn Care Fund on June 17, 2005. All interest earned by funds in the Mississippi Burn Care Fund shall be credited to the fund and not the General Fund. For fiscal year 2006, and for each fiscal year thereafter, the Legislature may appropriate interest, income or other funds credited to the Mississippi Burn Care Fund, and there shall be no requirement that the monies deposited to the fund be held inviolate in trust. Any appropriation of funds from the Mississippi Burn Care Fund shall be to the Mississippi Department of Health for the purpose of carrying out its responsibilities established in Section 41-59-5; however, after the Mississippi Burn Center established at the University of Mississippi Medical Center under Section 37-115-45 is operational, any appropriation of funds from the Mississippi Burn Care Fund shall be to the University of Mississippi Medical Center for the operation of the Mississippi Burn Center. The Mississippi Burn Care Fund shall be authorized to accept gifts, donations, bequests, appropriations or other grants from any source, governmental or private, for deposit into the fund. The Department of Health, or the University of Mississippi Medical Center after the Mississippi Burn Center is operational, shall be the agency responsible for receiving any such gifts, donations, bequests, appropriations or grants and shall deposit such to the Mississippi Burn Care Fund.

SOURCES: Laws, 1992, ch. 501, § 1; Laws, 2005, 2nd Ex Sess, ch. 47, § 1; Laws, 2007, ch. 569, § 2, eff from and after July 1, 2007.

Amendment Notes — The 2005 amendment, 2nd Ex Sess, ch. 47, added (3).

The 2007 amendment, in (3), added "however, after the Mississippi ... operation of the Mississippi Burn Center" at the end of the second-to-last sentence, and inserted "or the University of Mississippi Medical Center after the Mississippi Burn Center is operation" in the last sentence; and made minor stylistic changes.

CAPITAL IMPROVEMENTS PREPLANNING FUND

§ 7-9-151. "Capital Improvements Preplanning Fund" established; source of funds; purpose of fund [Repealed effective July 1, 2014].

There is hereby established in the State Treasury a revolving fund to be designated as the "Capital Improvements Preplanning Fund" which shall consist of monies appropriated or otherwise made available therefor by the Legislature. Such funds as may be deposited in the revolving fund may be expended by the Bureau of Building, Grounds and Real Property Management to obtain preliminary studies and plans for projects authorized by the Legislature. Funds also may be expended, in an amount not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00) for any project, for the purpose of obtaining preliminary studies and plans, to include appraisals and the purchase of options on real property, for projects the bureau may consider proposing to the Legislature for authorization. The bureau shall consider architectural and aesthetic compatibility in the preplanning of any project conducted using money from the Capital Improvements Preplanning Fund.

SOURCES: Laws, 1994, ch. 529, § 1; Laws, 2000, ch. 531, § 1; reenacted without change, Laws, 2003, ch. 375, § 1; reenacted without change, Laws, 2004, ch. 474, § 1; reenacted without change, Laws, 2006, ch. 410, § 1; Laws, 2008, ch. 408, § 1; reenacted without change, Laws, 2009, 2nd Ex Sess, ch. 22, § 1; reenacted without change, Laws, 2011, ch. 400, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2003 amendment reenacted the section without change.

The 2004 amendment reenacted the section without change.

The 2006 amendment reenacted the section without change.

The 2008 amendment substituted "Two Hundred Fifty Thousand Dollars ($250,000.00)" for "Two Hundred Thousand Dollars ($200,000.00)."

The 2009 2nd Ex Sess amendment reenacted the section without change.

The 2011 amendment reenacted the section without change.

§ 7-9-153. Payment of expenses for preplanning projects, preliminary studies, and plans; warrants; requisitions; limits on amount of warrants [Repealed effective July 1, 2014].

(1) All expenses for preplanning projects authorized by the Legislature shall be paid upon warrants drawn on the Capital Improvements Preplanning Fund created pursuant to Sections 7-9-151 through 7-9-159. The Department

of Finance and Administration shall issue warrants upon requisitions signed by the Director of the Bureau of Building, Grounds and Real Property Management. Such requisitions shall set forth the name of the project and estimated cost of the project, and the total of prior expenditures for such project. The Department of Finance and Administration shall not issue a warrant against the Capital Improvements Preplanning Fund if the total amount expended for preliminary study and planning on the project exceeds two and one-half percent (2-½%) of the estimated cost of such project or appraised price of the proposed property.

(2) Expenses for preliminary studies and plans, to include appraisals and the purchase of options on real property, for projects the bureau may consider proposing to the Legislature for authorization shall be paid upon warrants drawn on the Capital Improvements Preplanning Fund created pursuant to Sections 7-9-151 through 7-9-159. The Department of Finance and Administration shall issue warrants upon requisitions signed by the Director of the Bureau of Building, Grounds and Real Property Management. Such requisitions shall set forth the name of the project and estimated cost of the project, and the total of prior expenditures for such project. The Department of Finance and Administration shall not issue a warrant against the Capital Improvements Preplanning Fund for a project if the total amount expended for preliminary studies and plans, to include appraisals and the purchase of options on real property, for the project exceeds Two Hundred Fifty Thousand Dollars ($250,000.00).

SOURCES: Laws, 1994, ch. 529, § 2; Laws, 2000, ch. 531, § 2; reenacted without change, Laws, 2003, ch. 375, § 2; reenacted without change, Laws, 2004, ch. 474, § 2; reenacted without change, Laws, 2006, ch. 410, § 2; Laws, 2008, ch. 408, § 2; reenacted without change, Laws, 2009, 2nd Ex Sess, ch. 22, § 2; reenacted without change, Laws, 2011, ch. 400, § 2, eff from and after July 1, 2011.

Amendment Notes — The 2003 amendment reenacted the section without change.

The 2004 amendment reenacted the section without change.

The 2006 amendment reenacted the section without change.

The 2008 amendment substituted "two and one-half percent (2-½%)" for "two percent (2%)" in the last sentence of (1), and "Two Hundred Fifty Thousand Dollars ($250,000.00)" for "Two Hundred Thousand Dollars ($200,000.00)" at the end of (2).

The 2009 2nd Ex Sess amendment reenacted the section without change.

The 2011 amendment reenacted the section without change.

§ 7-9-155. Repayment of preplanning funds received from Fund [Repealed effective July 1, 2014].

SOURCES: Laws, 1994, ch. 529, § 3; Laws, 2000, ch. 531, § 3; reenacted without change, Laws, 2003, ch. 375, § 3; reenacted without change, Laws, 2004, ch. 474, § 3; reenacted without change, Laws, 2006, ch. 410, § 3; reenacted without change, Laws, 2009, 2nd Ex Sess, ch. 22, § 3; reenacted without change, Laws, 2011, ch. 400, § 3, eff from and after July 1, 2011.

Editor's Note — This section was reenacted without change by Laws, 2003, ch. 375, § 3, effective from and after March 13, 2003. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws, 2004, ch. 474, effective from after July 1, 2004. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws, 2006, ch. 410, effective from and after July 1, 2006. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2009, 2nd Ex Sess, ch. 22, effective upon passage, (approval date, June 30, 2009). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2011, ch. 400, effective from and after July 1, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2003 amendment reenacted the section without change.

The 2004 amendment reenacted the section without change.

The 2006 amendment reenacted the section without change.

The 2009 2nd Ex Sess amendment reenacted the section without change.

The 2011 amendment reenacted the section without change.

§ 7-9-157. Department of Finance and Administration authorized to receive and expend source funds in connection with expenditure of funds deposited into Fund [Repealed effective July 1, 2014].

SOURCES: Laws, 1994, ch. 529, § 4; reenacted without change, Laws, 2003, ch. 375, § 4; reenacted without change, Laws, 2004, ch. 474, § 4; reenacted without change, Laws, 2006, ch. 410, § 4; reenacted without change, Laws, 2009, 2nd Ex Sess, ch. 22, § 4; reenacted without change, Laws, 2011, ch. 400, § 4, eff from and after July 1, 2011.

Editor's Note — This section was reenacted without change by Laws, 2003, ch. 375, § 4, effective from and after March 13, 2003. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws, 2004, ch. 474, effective from after July 1, 2004. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws, 2006, ch. 410, effective from and after July 1, 2006. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2009, 2nd Ex Sess, ch. 22, effective upon passage, (approval date, June 30, 2009). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2011, ch. 400, effective from and after July 1, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2003 amendment reenacted the section without change.

The 2004 amendment reenacted the section without change.

The 2006 amendment reenacted the section without change.

The 2009 2nd Ex Sess amendment reenacted the section without change.
The 2011 amendment reenacted the section without change.

§ 7-9-159. Transfers of funds between Funds [Repealed effective July 1, 2014].

SOURCES: Laws, 1994, ch. 529, § 5; reenacted without change, Laws, 2003, ch. 375, § 5; reenacted without change, Laws, 2004, ch. 474, § 5; reenacted without change, Laws, 2006, ch. 410, § 5; reenacted without change, Laws, 2009, 2nd Ex Sess, ch. 22, § 5; reenacted without change, Laws, 2011, ch. 400, § 5, eff from and after July 1, 2011.

Editor's Note — This section was reenacted without change by Laws, 2003, ch. 375, § 5, effective from and after March 13, 2003. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws, 2004, ch. 474, effective from after July 1, 2004. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws, 2006, ch. 410, effective from and after July 1, 2006. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2009, 2nd Ex Sess, ch. 22, effective upon passage, (approval date, June 30, 2009). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2011, ch. 400, effective from and after July 1, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2003 amendment reenacted the section without change.
The 2004 amendment reenacted the section without change.
The 2006 amendment reenacted the section without change.
The 2009 2nd Ex Sess. amendment reenacted the section without change.
The 2011 amendment reenacted the section without change.

§ 7-9-161. Repeal of §§ 7-9-151 through 7-9-159.

Sections 7-9-151 through 7-9-159, Mississippi Code of 1972, shall be repealed on July 1, 2014.

SOURCES: Laws, 2000, ch. 531, § 4; Laws, 2003, ch. 375, § 6; Laws, 2004, ch. 474, § 6; Laws, 2006, ch. 410, § 6; Laws, 2009, 2nd Ex Sess, ch. 22, § 6; Laws, 2011, ch. 400, § 6, eff from and after July 1, 2011.

Amendment Notes — The 2003 amendment extended the date of the repealer for §§ 7-9-151 through 7-9-159 from "July 1, 2003" until "July 1, 2004."

The 2004 amendment extended the date of the repealer for §§ 7-9-151 through 7-9-159 from "July 1, 2004" until "July 1, 2006."

The 2006 amendment extended the date of the repealer for §§ 7-9-151 through 7-9-159 by substituting "on July 1, 2008" for "from and after July 1, 2006."

The 2009 Second Extraordinary Session amendment extended the date of the repealer for §§ 7-9-151 through 7-9-159 by substituting "on July 1, 2011" for "from and after July 1, 2008."

The 2011 amendment extended the repealer provision from "July 1, 2011" to "July 1, 2014."

CHAPTER 11

Secretary of State; Land Records

§ 7-11-11. Duties and powers of Secretary of State.

JUDICIAL DECISIONS

1. In general.

Motion to remand was granted because under Miss. Code Ann. §§ 7-11-11 and 29-3-1 it was without question that the Mississippi secretary of state and the public school district were necessary parties to the quiet title action that involved 16th section school lands. As such, complete diversity did not exist. Clark Techs., LLC v. Hood, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 75318 (S.D. Miss. Aug. 14, 2009).

Secretary of State had a clear interest in the property, and pursuant to Miss. Code Ann. § 7-11-11, which enumerated the duties and powers of the Secretary of State, the property was to come under the Secretary of State's charge once the redemption period was over, and this entitled the Secretary of State to be recognized in the eminent domain proceedings; if the Department of Finance and Administration had strictly followed the procedural requirements of § 11-27-7, it would have named the Secretary of State as a defendant. Smith v. Jackson State Univ., 995 So. 2d 88 (Miss. 2008).

Even though the estate retained a right of possession and redemption — the fee passed to the State of Mississippi on August 28, 2000, and the State became the owner of the land, and after the sale and during the time allowed for redemption, the State possessed an inchoate title to the land, and after the redemption period was over, the Secretary of State had charge of the lands forfeited to the state for nonpayment of taxes. Smith v. Jackson State Univ., 995 So. 2d 88 (Miss. 2008).

Despite the approval from the Mississippi Gaming Commission for a site for gaming, the Secretary of State's decision to deny the public trust tidelands lease was made within the discretion granted to him; the Secretary of State had the final decision-making authority concerning the proposed public trust tidelands lease, and the Secretary of State had the responsibility of preserving the public trust tidelands for the people of the State of Mississippi. Columbia Land Dev., LLC v. Sec'y of State, 868 So. 2d 1006 (Miss. 2004).

TITLE 9

COURTS

CHAPTER 1

Provisions Common to Courts

GENERAL PROVISIONS

§ 9-1-11. Judge not to sit when interested or related.

JUDICIAL DECISIONS

1. In general.

Trial court did not abuse its discretion in denying a mother's motion for recusal as the appellate record did not identify any evidence under Miss. Const. Art. 6,

§ 165 or Miss. Code. Ann. § 9-1-11 that would disqualify the trial judge. J.N.W.E. v. W.D.W., 922 So. 2d 12 (Miss. Ct. App. 2005), writ of certiorari denied by 926 So. 2d 922, 2006 Miss. LEXIS 129 (Miss. 2006).

2. Relationship to parties.

In a case alleging tortious interference with business relations, there was no error based on a trial judge's failure to recuse himself under Miss. Unif. Cir. & Cty. R. 1.15 because the owners failed to raise the issue of alleged impartiality at the trial court level; the owners' website showed that they knew of a grounds for recusal at the time of trial, and even if the owners had not been able to raise this issue before the trial judge, a reversal would still not have been granted because the judge was not connected to the objectors by affinity or consanguinity, and he had no interest in the outcome of the case based on vague allegations that the judge had eaten at the owners' lodge. Bateman v. Gray, 963 So. 2d 1284 (Miss. Ct. App. 2007).

Trial judge was not required to disqualify himself under Miss. Const. art. VI, § 165, Miss. Code Ann. § 9-1-11, or Miss. Unif. Cir. & County Ct. Prac. R. 1.15 where there was no evidence that the trial judge was connected with the parties through marriage or blood and there was no evidence that the judge may have had an interest in the outcome of the proceeding, or that he was otherwise precluded by the statute; it was only in causes wherein the judge may have been of counsel that provided for disqualification. Hathcock v. S. Farm Bureau Cas. Ins. Co., 912 So. 2d 844 (Miss. 2005).

5. Interest in cause.

Postconviction relief was properly denied in a burglary case because the trial judge did nothing more than accept appellant's plea and give the appropriate sentence; therefore, he did not get involved and there was no reason for him to recuse himself. Christie v. State, 915 So. 2d 1073 (Miss. Ct. App. 2005).

Defendant's convictions for armed robbery and arson were proper where merely presenting a document which, testimony revealed, was inaccurate and written at the behest of defendant, was insufficient to establish that the judge had an interest in the outcome; defendant did not explain what benefit, other than to disqualify the judge, the testimony would have been to his case or how he was prejudiced by its absence. Payton v. State, 897 So. 2d 921 (Miss. 2003).

6. Prior interest in cause as counsel.

Because the judge appeared on behalf of the state as an assistant district attorney at the inmate's plea colloquy he abused his discretion when he failed to recuse himself and ruled on the inmate's post-conviction relief motion. Both due process and Miss. Code Ann. § 9-1-11 required reversal of the dismissal of the inmate's motion post conviction relief. Overstreet v. State, 17 So. 3d 621 (Miss. Ct. App. 2009).

Because the judge appeared on behalf of the state as an assistant district attorney at the inmate's plea colloquy he abused his discretion when he failed to recuse himself and ruled on the inmate's post-conviction relief motion. Both due process and Miss. Code Ann. § 9-1-11 required reversal of the dismissal of the inmate's motion post conviction relief. Overstreet v. State, 17 So. 3d 621 (Miss. Ct. App. 2009).

7. Consent.

Circuit judge, who as an assistant district attorney had participated in a suspect's prosecution, was disqualified from ruling on the suspect's motion for postconviction relief and should have recused himself because, even assuming that the suspect had effectively waived the judge's disqualification to preside over his guilty plea hearing, that waiver did not extend to the postconviction proceeding, which was separate and distinct from the underlying criminal proceeding. Holmes v. State, 966 So. 2d 858 (Miss. Ct. App. 2007).

Denial of the mother's motion to recuse the judge was proper where the mother brought up the issue of recusal of the judge after the case was decided against her; therefore, she effectively acquiesced to the judge hearing her case. Watts v. Watts, 854 So. 2d 11 (Miss. Ct. App. 2003), cert. denied, 859 So. 2d 392 (Miss. 2003).

ATTORNEY GENERAL OPINIONS

A practicing attorney selected as a special judge for service on the Supreme Court may remain of counsel in all cases presently pending in the state and federal courts. However, pursuant to § 9-1-25 which applies to any judge of the Supreme Court, a special judge may not be engaged in the practice of law and, therefore, may not practice in any of the state courts during his tenure as a special judge. A special judge may, pursuant to the same statute, practice in the federal courts in any case in which he or she was engaged when appointed. Hurst, May, 21, 2004, A.G. Op. 04-0180.

§ 9-1-17. Supreme Court, circuit, chancery and county courts and Court of Appeals may punish for contempt and refer certain persons for placement in restitution, house arrest or restorative justice center or program.

The Supreme, circuit, chancery and county courts and the Court of Appeals shall have power to fine and imprison any person guilty of contempt of the court while sitting, but the fine shall not exceed One Hundred Dollars ($100.00) for each offense, nor shall the imprisonment continue longer than thirty (30) days. If any witness refuse to be sworn or to give evidence, or if any officer or person refuse to obey or perform any rules, order, or judgment of the court, such court shall have power to fine and imprison such officer or person until he shall give evidence, or until the rule, order, or judgment shall be complied with.

At the discretion of the court, any person found in contempt for failure to pay child support and imprisoned therefor may be referred for placement in a state, county or municipal restitution, house arrest or restorative justice center or program, provided such person meets the qualifications prescribed in Section 99-37-19.

SOURCES: Codes, Hutchinson's 1848, ch. 53, art. 2 (177), ch. 54, art. 2 (48); 1857, ch. 61, art. 37, ch. 62, art. 4; 1871, §§ 538, 980; 1880, § 2273; 1892, § 923; 1906, § 999; Hemingway's 1917, § 719; 1930, § 741; 1942, § 1656; Laws, 1928, ch. 42; Laws, 1993, ch. 518, § 10, eff July 13, 1993 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section); Laws, 2009, ch. 367, § 1, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment added the last paragraph.

JUDICIAL DECISIONS

1. In general.
2. Contempt, what constitutes.
3. —Constructive contempt.
4. Rights of defendant.
5. Proceedings for contempt.
7. —Evidence.
8. —Judgment.

1. In general.

Chancery court could hold a mother in contempt pursuant to Miss. Code Ann. § 9-1-17 because her failure to pay her portion of a car lease constituted a direct

violation of the chancery court's order. Mercier v. Mercier, 11 So. 3d 1283 (Miss. Ct. App. 2009).

Where a decedent's daughter was held in contempt for failing to inventory and turn over to decedent's wife all assets in her possession that belonged to the decedent's estate, the contempt was civil and not criminal because: (1) the contempt order's primary purpose was to enforce the wife's rights to possess the decedent's property, and (2) the daughter had been ordered not to pay a fine to the court, but only to pay the wife's attorney's fees. Fisher v. Patton (In re Estate of Patton), 971 So. 2d 1281 (Miss. Ct. App. 2008).

2. Contempt, what constitutes.

Husband was not in contempt for failure to comply with a modified child support order; the order made it virtually impossible for the husband to be held in contempt by allowing him to estimate and subtract college expenses from the monthly support obligation during the summer months. Weeks v. Weeks, 29 So. 3d 80 (Miss. Ct. App. 2009).

Husband was not in contempt for failing to provide a wife with evidence that he had complied with a previous order to maintain the wife as an irrevocable beneficiary on a life insurance policy, because the order only required him to maintain the coverage, not to provide her with proof of coverage. Weeks v. Weeks, 29 So. 3d 80 (Miss. Ct. App. 2009).

Chancery court's refusal to hold the husband in contempt was not error where the wife failed to show that he had not maintained a life insurance policy with her as an irrevocable beneficiary. Weeks v. Weeks, — So. 2d —, 2008 Miss. App. LEXIS 187 (Miss. Ct. App. Apr. 1, 2008), opinion withdrawn by, substituted opinion at 29 So. 3d 80, 2009 Miss. App. LEXIS 860 (Miss. Ct. App. 2009).

Contemnor failed to comply with divorce decree, and a chancellor did not commit manifest error or abuse the chancery court's discretion by incarcerating the contemnor, as the chancellor's decision was supported by the record, which included the chancellor's findings that the contemnor was not credible; further, the divorce decree was not ambiguous, so the contemnor's argument that the contemnor could not obey because of the decree's alleged vagueness was rejected. Stribling v. Stribling, 960 So. 2d 556 (Miss. Ct. App. 2007).

Through the court reporter's repeated failure to complete trial transcripts in a timely manner, the court reporter had a serious negative effect on the efficiency of the court; pursuant to Miss. R. Governing Certified Ct. Reporters IX(A)(2), the court reporter was in willful constructive criminal contempt of the Mississippi Supreme Court for his repeated failure to comply with its orders and the Supreme Court revoked his court reporter certification and ordered him to pay all costs of the the contempt proceedings, including attorney's fees and court reporter's fees. In re Hoppock, 849 So. 2d 1275 (Miss. 2003).

3. —Constructive contempt.

Through the court reporter's repeated failure to complete trial transcripts in a timely manner, the court reporter had a serious negative effect on the efficiency of the court; pursuant to Miss. R. Governing Certified Ct. Reporters IX(A)(2), the court reporter was in willful constructive criminal contempt of the Mississippi Supreme Court for his repeated failure to comply with its orders and the Supreme Court revoked his court reporter certification and ordered him to pay all costs of the the contempt proceedings, including attorney's fees and court reporter's fees. In re Hoppock, 849 So. 2d 1275 (Miss. 2003).

4. Rights of defendant.

Defendant's due process rights were not violated by a contempt conviction because a trial court, even though not required for direct contempt, gave defendant notice and conducted a hearing where she was allowed to present evidence. In re Hampton, 919 So. 2d 949 (Miss. 2006), writ of certiorari denied by 547 U.S. 1131, 126 S. Ct. 2042, 164 L. Ed. 2d 784, 2006 U.S. LEXIS 3868, 74 U.S.L.W. 3639 (2006).

5. Proceedings for contempt.

7. —Evidence.

In wife's contempt action against former husband, the wife presented no evidence that the husband issued 23 checks for child support, which the wife did not present to the bank for months, with fraudu-

lent intent; rather, the record showed the wife rebuffed the husband's efforts to make good on the checks, and wanted to file another complaint causing the husband yet more financial problems and emotional distress, and the wife was properly held in contempt. Broome v. Broome, 832 So. 2d 1247 (Miss. Ct. App. 2002).

8. —Judgment.

Attorney fees, witness fees, and court reporter fees were properly imposed against an attorney who failed to attend a court-ordered hearing; she was properly fined and ordered to serve jail time under Miss. Code Ann. § 9-1-17 for direct contempt, and the fees were awarded in a bifurcated proceeding. In re Hampton, 919 So. 2d 949 (Miss. 2006), writ of certiorari denied by 547 U.S. 1131, 126 S. Ct. 2042, 164 L. Ed. 2d 784, 2006 U.S. LEXIS 3868, 74 U.S.L.W. 3639 (2006).

§ 9-1-25. Judges not to practice law.

JUDICIAL DECISIONS

1. In general.
3. Discipline.

1. In general.

Where a county judge had not willfully abused the privilege of filing new complaints while in office, the court adopted the commission's recommendation that the judge be publicly reprimanded and that he be reinstated after his temporary suspension. Miss. Comm'n on Judicial Performance v. Osborne, 876 So. 2d 324 (Miss. 2004).

3. Discipline.

Where a judge breached the peace during the repossession of an automobile jointly owned by the judge's wife and mother-in-law, his conduct violated Miss. Code Jud. Conduct Canon 1; the Supreme Court of Mississippi suspended him for 180 days without compensation. The judge had a pattern of misconduct, as he had been disciplined in the past for practicing law as a judge in violation of Miss. Code Ann. §§ 9-1-25, § 9-9-9. Miss. Comm'n on Judicial Performance v. Osborne, 977 So. 2d 314 (Miss. 2008).

ATTORNEY GENERAL OPINIONS

Once an attorney has concluded his or her service as a special judge, the prohibition of this section would no longer apply. Therefore, the attorney may return to the practice of law in all cases in which the attorney was designated as counsel of record before his selection as special judge. The length of the appointment's term does not change this conclusion. Hurst, May, 21, 2004, A.G. Op. 04-0180.

A practicing attorney selected as a special judge for service on the Supreme Court may remain of counsel in all cases presently pending in the state and federal courts. However, pursuant to this section which applies to any judge of the Supreme Court, a special judge may not be engaged in the practice of law and, therefore, may not practice in any of the state courts during his tenure as a special judge. A special judge may, pursuant to the same statute, practice in the federal courts in any case in which he or she was engaged when appointed. Hurst, May, 21, 2004, A.G. Op. 04-0180.

§ 9-1-36. Office allowance for circuit judges, chancellors and certain staff; procedure to employ certain staff members; title to tangible property; reports; adoption of rules and regulations.

(1) Each circuit judge and chancellor shall receive an office operating allowance for the expenses of operating the office of the judge, including retaining a law clerk, legal research, stenographic help, stationery, stamps, furniture, office equipment, telephone, office rent and other items and expenditures necessary and incident to maintaining the office of judge. The allowance shall be paid only to the extent of actual expenses incurred by the judge as itemized and certified by the judge to the Supreme Court in the amounts set forth in this subsection; however, the judge may expend sums in excess thereof from the compensation otherwise provided for his office. No part of this expense or allowance shall be used to pay an official court reporter for services rendered to said court.

(a) Until July 1, 2008, the office operating allowance under this subsection shall be not less than Four Thousand Dollars ($4,000.00) nor more than Nine Thousand Dollars ($9,000.00) per annum.

(b) From and after July 1, 2008, the office operating allowance under this subsection shall be Nine Thousand Dollars ($9,000.00) per annum.

(2) In addition to the amounts provided for in subsection (1), there is hereby created a separate office allowance fund for the purpose of providing support staff to judges. This fund shall be managed by the Administrative Office of Courts.

(3) Each judge who desires to employ support staff after July 1, 1994, shall make application to the Administrative Office of Courts by submitting to the Administrative Office of Courts a proposed personnel plan setting forth what support staff is deemed necessary. The plan may be submitted by a single judge or by any combination of judges desiring to share support staff. In the process of the preparation of the plan, the judges, at their request, may receive advice, suggestions, recommendations and other assistance from the Administrative Office of Courts. The Administrative Office of Courts must approve the positions, job descriptions and salaries before the positions may be filled. The Administrative Office of Courts shall not approve any plan which does not first require the expenditure of the funds in the support staff fund for compensation of any of the support staff before expenditure is authorized of county funds for that purpose. Upon approval by the Administrative Office of Courts, the judge or judges may appoint the employees to the position or positions, and each employee so appointed will work at the will and pleasure of the judge or judges who appointed him but will be employees of the Administrative Office of Courts. Upon approval by the Administrative Office of Courts, the appointment of any support staff shall be evidenced by the entry of an order on the minutes of the court. When support staff is appointed jointly by two (2) or more judges, the order setting forth any appointment shall be entered on the minutes of each participating court.

(4) The Administrative Office of Courts shall develop and promulgate minimum qualifications for the certification of court administrators. Any court administrator appointed on or after October 1, 1996, shall be required to be certified by the Administrative Office of Courts.

(5) Support staff shall receive compensation pursuant to personnel policies established by the Administrative Office of Courts; however:

(a) From and after July 1, 1994, the Administrative Office of Courts shall allocate from the support staff fund an amount of Forty Thousand Dollars ($40,000.00) per fiscal year per judge for whom support staff is approved for the funding of support staff assigned to a judge or judges; and

(b) From and after July 1, 2008, the Administrative Office of Courts shall allocate from the support staff fund an amount of Forty Thousand Dollars ($40,000.00), in addition to the amount provided in paragraph (a). Of the amount provided in this paragraph (b), each judge shall utilize an amount sufficient to ensure that judge has access to the services of a law clerk, whether hired by the judge separately or in concert with another judge. Any excess funds remaining upon satisfaction of this requirement may be used for any other support staff as defined in this section. Any employment pursuant to this subsection shall be subject to the provisions of Section 25-1-53.

The Administrative Office of Courts may approve expenditure from the fund for additional equipment for support staff appointed pursuant to this section in any year in which the allocation per judge is sufficient to meet the equipment expense after provision for the compensation of the support staff.

(6) For the purposes of this section, the following terms shall have the meaning ascribed herein unless the context clearly requires otherwise:

(a) "Judges" means circuit judges and chancellors, or any combination thereof;

(b) "Support staff" means court administrators, law clerks, legal research assistants or secretaries, or any combination thereof, but shall not mean school attendance officers;

(c) "Compensation" means the gross salary plus all amounts paid for benefits or otherwise as a result of employment or as required by employment; provided, however, that only salary earned for services rendered shall be reported and credited for Public Employees' Retirement System purposes. Amounts paid for benefits or otherwise, including reimbursement for travel expenses, shall not be reported or credited for retirement purposes;

(d) "Law clerk" means a clerk hired to assist a judge or judges who has a law degree or who is a full-time law student who is making satisfactory progress at an accredited law school.

(7) Title to all tangible property, excepting stamps, stationery and minor expendable office supplies, procured with funds authorized by this section, shall be and forever remain in the State of Mississippi to be used by the circuit judge or chancellor during the term of his office and thereafter by his successors.

(8) Any circuit judge or chancellor who did not have a primary office provided by the county on March 1, 1988, shall be allowed an additional Four

Thousand Dollars ($4,000.00) per annum to defray the actual expenses incurred by the judge or chancellor in maintaining an office; however, any circuit judge or chancellor who had a primary office provided by the county on March 1, 1988, and who vacated the office space after that date for a legitimate reason, as determined by the Department of Finance and Administration, shall be allowed the additional office expense allowance provided under this subsection. The county in which a circuit judge or chancellor sits is authorized to provide funds from any available source to assist in defraying the actual expenses to maintain an office.

(9) The Supreme Court, through the Administrative Office of Courts, shall submit to the Department of Finance and Administration the itemized and certified expenses for office operating allowances that are directed to the court pursuant to this section.

(10) The Supreme Court, through the Administrative Office of Courts, shall have the power to adopt rules and regulations regarding the administration of the office operating allowance authorized pursuant to this section.

SOURCES: Codes, 1942, § 4175.6; Laws, 1972, ch. 398, §§ 1, 2, 3; Laws, 1978, ch. 531, § 1; Laws, 1988, ch. 528, § 1; Laws, 1990, ch. 485, § 1; Laws, 1991, ch. 373, § 1; Laws, 1993, ch. 518, § 42; Laws, 1994, ch. 506, § 1; Laws, 1996, ch. 414, § 1; Laws, 1999, ch. 524, § 1; Laws, 2004, ch. 534, § 1; Laws, 2007, ch. 557, § 3; brought forward without change, Laws, 2010, ch. 561, § 4, eff from and after July 1, 2010.

Amendment Notes — The 2004 amendment added the second sentence in (8).

The 2007 amendment, in (1), substituted "Supreme Court in the amounts set forth in this subsection; however" for "Supreme Court and then in an amount of Four Thousand Dollars ($4,000.00) per annum; however" in the introductory paragraph and added (a) and (b); in (5), added (b), and divided the former first paragraph into the present introductory paragraph and (a) and (b) by inserting "(a)" preceding "From and after" and adding "(b)" and the first three sentences in (b); added (6)(d); and made minor stylistic changes.

The 2010 amendment brought the section forward without change.

ATTORNEY GENERAL OPINIONS

Section 9-1-36(8) does not contemplate payments by a county for expenses in maintaining a private office by a circuit judge or chancellor. Shands, Mar. 5, 2003, A.G. Op. #03-0049.

There is no authority for counties within a circuit court district to supplement by pro rata share the salaries of court support staff. Gordon, Oct. 17, 2003, A.G. Op. 03-0472.

County approval is required before a position is submitted for approval by the Administrative Office of Courts at a salary which would increase the county's supplemental payment obligations. Williams, Apr. 2, 2004, A.G. Op. 04-0106.

This section allows a county to provide funds for expenses in maintaining a private office by a circuit judge or chancellor if no office is provided by the county. The term "actual expenses" means expenses actually incurred by the circuit judge or chancellor in maintaining an office. Shands, Aug. 27, 2004, A.G. Op. 04-0433.

Counties within a judicial district do not have a responsibility to pay for the office expenses of a circuit judge or chancellor. However, each county within the judicial district may provide funds to assist in defraying the actual expenses to maintain an office. Shands, Aug. 27, 2004, A.G. Op. 04-0433.

Shands, Aug, 27, 2004, A.G. Op. 04-0433 withdrawn. Littlejohn, Dec. 9, 2004, A.G. Op. 04-0596.

§ 9-1-41. Reasonableness of attorneys' fees; evidence.

JUDICIAL DECISIONS

2. Application.

In a products liability action alleging three welding rod manufacturers' failure to warn, the court granted the married couple's request for an attorney's fee award; exercising its discretion under Fed. R. Civ. P. 54(d) and recognizing the factors for determining a reasonable fee, set forth in Miss. R. Prof. Conduct 1.5, as well as the legislative dictated regarding reasonable fees in Miss. Code Ann. § 9-1-41, the court allowed the manufacturers to either stipulate to the fee amount requested by the couple, $2,173,185.73, or to provide the court with a challenge to the couple's fee request within 28 days from the date of the court's order. Jowers v. BOC Group, Inc., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 28806 (S.D. Miss. Apr. 1, 2009), vacated in part by 617 F.3d 346, 2010 U.S. App. LEXIS 17862 (5th Cir. Miss. 2010).

Where an insurance salesman breached an employment agreement by selling policies to former clients, the award of attorney's fees was proper because the former employer was not require to provide any additional offer of proof on the necessity or reasonableness of attorneys' fees. Raines v. Bottrell Ins. Agency, Inc., 992 So. 2d 642 (Miss. Ct. App. 2008), writ of certiorari dismissed by 997 So. 2d 924, 2008 Miss. LEXIS 541 (Miss. 2008).

In a collection suit, an award of attorney's fees in the amount of one-third of the judgment was presumptively reasonable based on the application of several factors, such as the difficulty in collecting the judgment due to a bankruptcy filing and a fee agreement. Gulf City Seafoods, Inc. v. Oriental Foods, Inc., 986 So. 2d 974 (Miss. Ct. App. 2007), writ of certiorari denied by 987 So. 2d 451, 2008 Miss. LEXIS 341 (Miss. 2008).

In a dispute involving the sale of real estate, a chancellor used the reasonableness factors under Miss. Code Ann. § 9-1-41 in awarding the sellers their attorney fees under the terms of a contract since they prevailed. Culbreath Revocable Trust v. Sanders, 979 So. 2d 704 (Miss. Ct. App. 2007), writ of certiorari denied by 979 So. 2d 691, 2008 Miss. LEXIS 162 (Miss. 2008).

In a complex contract case regarding damages to equipment owned by a utilities commission, a trial court did not abuse its discretion by awarding fees to two attorneys in the case, as it was clear from the language of the trial judge's order that the judge did in fact apply the reasonableness factors under McKee v. McKee, 418 So. 2d 764 (Miss 1982), even though he did not detail his reasoning; moreover, it was unnecessary to determine whether McKee predated Miss. Code Ann. § 9-1-41. Upchurch Plumbing, Inc. v. Greenwood Utils. Comm'n, 964 So. 2d 1100 (Miss. 2007).

Chancery court erred in finding that there was nothing before it to show that the creditor's accountant's fees were reasonable; but for the fraud of the debtor, the creditor would not have incurred this expense. Allred v. Fairchild, 916 So. 2d 529 (Miss. 2005).

Attorneys' fees awarded in a case involving an employer's bad faith failure to pay a worker's compensation claim were improperly granted because the trial court abused its discretion by making inaccurate findings regarding the factors outlined in determining the reasonableness of such an award. Miss. Power & Light Co. v. Cook, 832 So. 2d 474 (Miss. 2002).

§ 9-1-43. Limit on compensation of chancery clerks and circuit clerks and their related employees; liability on bonds; chancery court clerk clearing accounts; circuit court clerk clearing accounts; journals and receipts; punishment for failure to deposit funds.

(1) After making deductions for employer contributions paid by the chancery or circuit clerk to the Public Employees' Retirement System under Sections 25-11-106.1 and 25-11-123(f)(4), employee salaries and related salary expenses, and expenses allowed as deductions by Schedule C of the Internal Revenue Code, no office of the chancery clerk or circuit clerk of any county in the state shall receive fees as compensation for the chancery clerk's or circuit clerk's services in excess of Ninety Thousand Dollars ($90,000.00). All such fees received by the office of chancery or circuit clerks that are in excess of the salary limitation shall be deposited by such clerk into the county general fund on or before April 15 for the preceding calendar year. If the chancery clerk or circuit clerk serves less than one (1) year, then he shall not receive as compensation any fees in excess of that portion of the salary limitation that can be attributed to his time in office on a pro rata basis. Upon leaving office, income earned by any clerk in his last full year of office but not received until after his last full year of office shall not be included in determining the salary limitation of the successor clerk. There shall be exempted from the provisions of this subsection any monies or commissions from private or governmental sources which: (a) are to be held by the chancery or circuit clerk in a trust or custodial capacity as prescribed in subsections (4) and (5); or (b) are received as compensation for services performed upon order of a court or board of supervisors which are not required of the chancery clerk or circuit clerk by statute.

(2) It shall be unlawful for any chancery clerk or circuit clerk to use fees in excess of Ninety Thousand Dollars ($90,000.00), to pay the salaries or actual or necessary expenses of employees who are related to such clerk by blood or marriage within the first degree of kinship according to the civil law method of computing kinship as provided in Sections 1-3-71 and 1-3-73. However, the prohibition of this subsection shall not apply to any individual who was an employee of the clerk's office prior to the date his or her relative was elected as chancery or circuit clerk. The spouse and/or any children of the chancery clerk or circuit clerk employed in the office of the chancery clerk may be paid a salary; however, the combined annual salaries of the clerk, spouse and any child of the clerk may not exceed an amount equal to the salary limitation.

(3) The chancery clerk and the circuit clerk shall be liable on their official bond for the proper deposit and accounting of all monies received by his office. The State Auditor shall promulgate uniform accounting methods for the accounting of all sources of income by the offices of the chancery and circuit clerk.

(4) There is created in the county depository of each county a clearing account to be designated as the "chancery court clerk clearing account," into

which shall be deposited: (a) all such monies as the clerk of the chancery court shall receive from any person complying with any writ of garnishment, attachment, execution or other like process authorized by law for the enforcement of child support, spousal support or any other judgment; (b) any portion of any fees required by law to be collected in civil cases which are to pay for the service of process or writs in another county; and (c) any other money as shall be deposited with the court which by its nature is not, at the time of its deposit, public monies, but which is to be held by the court in a trust or custodial capacity in a case or proceeding before the court. The clerk of the chancery court shall account for all monies deposited in and disbursed from such account and shall be authorized and empowered to draw and issue checks on such account at such times, in such amounts and to such persons as shall be proper and in accordance with law.

The following monies paid to the chancery clerk shall be subject to the salary limitation prescribed under subsection (1): (a) all fees required by law to be collected for the filing, recording or abstracting of any bill, petition, pleading or decree in any civil case in chancery; (b) all fees collected for land recordings, charters, notary bonds, certification of decrees and copies of any documents; (c) all land redemption and mineral documentary stamp commissions; and (d) any other monies or commissions from private or governmental sources for statutory functions which are not to be held by the court in a trust capacity. Such fees as shall exceed the salary limitations shall be maintained in a bank account in the county depository and accounted for separately from those monies paid into the chancery court clerk clearing account.

(5) There is created in the county depository in each county a clearing account to be designated as the "circuit court clerk civil clearing account," into which shall be deposited: (a) all such monies and fees as the clerk of the circuit court shall receive from any person complying with any writ of garnishment, attachment, execution or any other like process authorized by law for the enforcement of a judgment; (b) any portion of any fees required by law or court order to be collected in civil cases; (c) all fees collected for the issuance of marriage licenses; and (d) any other money as shall be deposited with the court which by its nature is not, at the time of its deposit, public monies but which is to be held by the court in a trust or custodial capacity in a case or proceeding before the court.

There is created in the county depository in each county a clearing account to be designated as the "circuit court clerk criminal clearing account," into which shall be deposited: (a) all such monies as are received in criminal cases in the circuit court pursuant to any order requiring payment as restitution to the victims of criminal offenses; (b) any portion of any fees and fines required by law or court order to be collected in criminal cases; and (c) all cash bonds as shall be deposited with the court. The clerk of the circuit court shall account for all monies deposited in and disbursed from such account and shall be authorized and empowered to draw and issue checks on such account, at such times, in such amounts and to such persons as shall be proper and in accordance with law; however, such monies as are forfeited in criminal cases

shall be paid by the clerk of the circuit court to the clerk of the board of supervisors for deposit in the general fund of the county.

The following monies paid to the circuit clerk shall be subject to the salary limitation prescribed under subsection (1): (a) all fees required by law to be collected for the filing, recording or abstracting of any bill, petition, pleading or decree in any civil action in circuit court; (b) copies of any documents; and (c) any other monies or commissions from private or governmental sources for statutory functions which are not to be held by the court in a trust capacity.

(6) The chancery clerk and the circuit clerk shall establish and maintain a cash journal for recording cash receipts from private or government sources for furnishing copies of any papers of record or on file, or for rendering services as a notary public, or other fees wherein the total fee for the transaction is Ten Dollars ($10.00) or less. The cash journal entry shall include the date, amount and type of transaction, and the clerk shall not be required to issue a receipt to the person receiving such services. The State Auditor shall not take exception to the furnishing of copies or the rendering of services as a notary by any clerk free of charge.

In any county having two (2) judicial districts, whenever the chancery clerk serves as deputy to the circuit clerk in one (1) judicial district and the circuit clerk serves as deputy to the chancery clerk in the other judicial district, the chancery clerk may maintain a cash journal, separate from the cash journal maintained for chancery clerk receipts, for recording the cash receipts paid to him as deputy circuit clerk, and the circuit clerk may maintain a cash journal, separate from the cash journal maintained for circuit clerk receipts, for recording the cash receipts paid to him as deputy chancery clerk. The cash receipts collected by the chancery clerk in his capacity as deputy circuit clerk and the cash receipts collected by the circuit clerk in his capacity as deputy chancery clerk shall be subject to the salary limitation prescribed under subsection (1).

(7) Any clerk who knowingly shall fail to deposit funds or otherwise violate the provisions of this section shall be guilty of a misdemeanor in office and, upon conviction thereof, shall be fined in an amount not to exceed double the amount that he failed to deposit, or imprisoned for not to exceed six (6) months in the county jail, or be punished by both such fine and imprisonment.

SOURCES: Laws, 1993, ch. 481, § 1; Laws, 1997, ch. 570, § 9; Laws, 1998, ch. 369, § 1; Laws, 1999, ch. 422, § 1; Laws, 2004, ch. 505, § 11, eff August 19, 2004 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section; Laws, 2011, ch. 402, § 2, eff from and after passage (approved Mar. 14, 2011.)

Editor's Note — By letter dated August 19, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2004, ch. 505, § 16.

Amendment Notes — The 2004 amendment substituted "Ninety Thousand Dollars ($90,000.00)" for "Seventy-five Thousand Six Hundred Dollars ($75,600.00) annually, and from and after January 1, 2000, in excess of Eighty-three Thousand One Hundred Sixty Dollars ($83,160.00) annually" in (1); and substituted "Ninety Thousand Dollars

($90,000.00)" for "Seventy-five Thousand Six Hundred Dollars ($75,600.00) annually, and from and after January 1, 2000, in excess of Eighty-three Thousand One Hundred Sixty Dollars ($83,160.00) annually" in (2).

The 2011 amendment inserted "employer contributions paid by the chancery or circuit clerk to the Public Employees' Retirement System under Sections 25-11-106.1 and 25-11-123 (f)(4)" in (1).

JUDICIAL DECISIONS

1. In general.

In a case in which defendant, a former county circuit clerk, was convicted of embezzlement, in violation of 18 U.S.C.S. § 666(a)(1), his reliance on the Phillips decision, a Louisiana case, was misplaced. In the Phillips case, defendant, a former tax assessor of a parish, was not an agent of the parish under 18 U.S.C.S. § § 666(d)(1), because Louisiana law completely separated the tax assessor's office from the parish government; however, in Mississippi, circuit clerks were not completely separated from county governments in Mississippi, and the Phillips decision was not applicable in the present case. United States v. Harris, 2008 U.S. App. LEXIS 22020 (5th Cir. Oct. 21, 2008).

ATTORNEY GENERAL OPINIONS

The county identification number should be used in setting up a clearing account in the county depository for funds held by the chancery court in a case before the court. Creekmore, May 30, 2003, A.G. Op. 03-0035.

Nothing in subsection (2) of this section would authorize a circuit clerk to employ a relative within the third degree of kinship who is to be paid out of public funds by the board of supervisors pursuant to § 9-7-126. Dulaney, Aug. 27, 2004, A.G. Op. 04-0413.

The salary of a family member would not count as part of the twenty-five percent compensation of a retired circuit or chancery clerk. McLeod, Mar. 11, 2005, A.G. Op. 05-0056.

§ 9-1-45. Filing of annual reports by chancery and circuit clerks; failure to provide report; notice of noncompliance; hearing to determine level of compliance; penalties for noncompliance.

(1) Each chancery and circuit clerk shall file, not later than April 15 of each year, with the State Auditor of Public Accounts a true and accurate annual report on a form to be designed and supplied to each clerk by the State Auditor of Public Accounts immediately after January 1 of each year. The form shall include the following information: (a) revenues subject to the salary cap, including fees; (b) revenues not subject to the salary cap; and (c) expenses of office, including any salary paid to a clerk's spouse or children. Each chancery and circuit clerk shall provide any additional information requested by the Public Employees' Retirement System for the purpose of retirement calculations.

(2) In any county having two (2) judicial districts, a separate report may be filed by the chancery clerk and circuit clerk for each judicial district. Whenever the chancery clerk serves as deputy to the circuit clerk in one (1) judicial district and the circuit clerk serves as deputy to the chancery clerk in the other judicial district, each clerk may file, for the judicial district in which

he serves, one (1) report for the revenues and expenses of his office in his capacity as chancery or circuit clerk and a separate report for reporting the revenues collected and expenses incurred in his capacity as deputy circuit or deputy chancery clerk.

(3) If the chancery or circuit clerk fails to provide the reports required in this section, then the State Auditor shall give by United States certified mail, return receipt requested, written notification to the chancery or circuit clerk of noncompliance. If within thirty (30) days after receipt of the notice, the chancery or circuit clerk, in the opinion of the State Auditor, remains in noncompliance, the State Auditor may institute civil proceedings in a court of the county in which the clerk serves. The court, upon a hearing, shall decide the issue and if it determines that the clerk is not in substantial compliance, shall order the clerk to immediately and thereafter comply. Violations of any order of the court shall be punishable as for contempt. In addition, the court in its discretion may impose a civil penalty in an amount not to exceed Five Thousand Dollars ($5,000.00) upon the clerk, for which he shall be liable in his individual capacity, for any such noncompliance that the court determines as intentional or willful.

SOURCES: Laws, 1996, ch. 535, § 4; Laws, 1998, ch. 369, § 2; Laws, 2004, ch. 318, § 1, eff from and after passage (approved Apr. 12, 2004.)

Amendment Notes — The 2004 amendment designated the two formerly undesignated paragraphs as (1) and (2); and added (3).

§ 9-1-47. Municipal and justice courts authorized to purge judgment rolls of fines and fees owed by deceased person.

The municipal and justice courts are authorized to purge judgment rolls of all fines and fees owed by any deceased person upon presentation of proof that the person liable for such fines or fees is deceased.

SOURCES: Laws, 2009, ch. 499, § 2, eff from and after passage (approved Apr. 6, 2009.)

APPOINTMENT TO JUDICIAL OFFICE

SEC.

§ 9-1-103. Vacancy in office.

RESEARCH REFERENCES

Law Reviews. Judicial Selection — What is Right for Mississippi?, 21 Miss. C. L. Rev. 199, Spring, 2002.

§ 9-1-105. Physical disability or sickness; absence of judicial officer from state, etc.; appointment of special judge to serve on emergency basis.

(1) Whenever any judicial officer is unwilling or unable to hear a case or unable to hold or attend any of the courts at the time and place required by law by reason of the physical disability or sickness of such judicial officer, by reason of the absence of such judicial officer from the state, by reason of the disqualification of such judicial officer pursuant to the provision of Section 165, Mississippi Constitution of 1890, or any provision of the Code of Judicial Conduct, or for any other reason, the Chief Justice of the Mississippi Supreme Court, with the advice and consent of a majority of the justices of the Mississippi Supreme Court, may appoint a person as a special judge to hear the case or attend and hold a court.

(2) Upon the request of the Chief Judge of the Court of Appeals or the senior judge of a chancery or circuit court district, or upon his own motion, the Chief Justice of the Mississippi Supreme Court, with the advice and consent of a majority of the justices of the Mississippi Supreme Court, shall have the authority to appoint a special judge to serve on a temporary basis in a circuit or chancery court in the event of an emergency or overcrowded docket. It shall be the duty of any special judge so appointed to assist the court to which he is assigned in the disposition of causes so pending in such court for whatever period of time is designated by the Chief Justice.

(3) When a vacancy exists for any of the reasons enumerated in Section 9-1-103, the vacancy has not been filled within seven (7) days by an appointment by the Governor, and there is a pending cause or are pending causes in the court where the vacancy exists that in the interests of justice and in the orderly dispatch of the court's business require the appointment of a special judge, the Chief Justice of the Supreme Court, with the advice and consent of a majority of the justices of the Mississippi Supreme Court, may appoint a qualified person as a special judge to fill the vacancy until the Governor makes his appointment and such appointee has taken the oath of office.

(4) If the Chief Justice pursuant to this section shall make an appointment within the authority vested in the Governor by reason of Section 165, Mississippi Constitution of 1890, the Governor may at his election appoint a person to so serve. In the event that the Governor makes such an appointment, any appointment made by the Chief Justice pursuant to this section shall be void and of no further force or effect from the date of the Governor's appointment.

(5) When a judicial officer is unwilling or unable to hear a case or unable or unwilling to hold court for a period of time not to exceed two (2) weeks, the trial judge or judges of the affected district or county and other trial judges may agree among themselves regarding the appointment of a person for such case or such limited period of time. The trial judges shall submit a notice to the Chief Justice of the Supreme Court informing him of their appointment. If the Chief Justice does not appoint another person to serve as special judge within

seven (7) days after receipt of such notice, the person designated in such order shall be deemed appointed.

(6) A person appointed to serve as a special judge may be any currently sitting or retired chancery, circuit or county court judge, Court of Appeals judge or Supreme Court Justice, or any other person possessing the qualifications of the judicial office for which the appointment is made; provided, however, that a judge or justice who was retired from service at the polls shall not be eligible for appointment as a special judge in the district in which he served prior to his defeat.

(7) Except as otherwise provided in subsection (2) of this section, the need for an appointment pursuant to this section may be certified to the Chief Justice of the Mississippi Supreme Court by any attorney in good standing or other officer of the court.

(8) The order appointing a person as a special judge pursuant to this section shall describe as specifically as possible the duration of the appointment.

(9) A special judge appointed pursuant to this section shall take the oath of office, if necessary, and shall, for the duration of his appointment, enjoy the full power and authority of the office to which he is appointed.

(10) Any currently sitting justice or judge appointed as a special judge under this section shall receive no additional compensation for his or her service as special judge. Any other person appointed as a special judge hereunder shall, for the period of his service, receive compensation from the state for each day's service a sum equal to 1/260 of the current salary in effect for the judicial office; provided, however, that no retired chancery, circuit or county court judge, retired Court of Appeals judge or any retired Supreme Court Justice appointed as a special judge pursuant to this section may, during any fiscal year, receive compensation in excess of twenty-five percent (25%) of the current salary in effect for a chancery or circuit court judge. Any person appointed as a special judge shall be reimbursed for travel expenses incurred in the performance of the official duties to which he may be appointed hereunder in the same manner as other public officials and employees as provided by Section 25-3-41, Mississippi Code of 1972.

(11) If any person appointed as such special judge is receiving retirement benefits by virtue of the provisions of the Public Employees' Retirement Law of 1952, appearing as Sections 25-11-1 through 25-11-139, Mississippi Code of 1972, such benefits shall not be reduced in any sum whatsoever because of such service, nor shall any sum be deducted as contributions toward retirement under said law.

(12) The Supreme Court shall have authority to prescribe rules and regulations reasonably necessary to implement and give effect to the provisions of this section.

(13) Nothing in this section shall abrogate the right of attorneys engaged in a case to agree upon a member of the bar to preside in a case pursuant to Section 165 of the Mississippi Constitution of 1890.

(14) The Supreme Court shall prepare the necessary payroll for special judges appointed pursuant to this section and shall submit such payroll to the Department of Finance and Administration.

(15) Special judges appointed pursuant to this section shall direct requests for reimbursement for travel expenses authorized pursuant to this section to the Supreme Court and the Supreme Court shall submit such requests to the Department of Finance and Administration. The Supreme Court shall have the power to adopt rules and regulations regarding the administration of travel expenses authorized pursuant to this section.

SOURCES: Laws, 1989, ch. 587, § 3; Laws, 1991, ch. 373, § 2; Laws, 1993, ch. 518, § 17; Laws, 2005, ch. 501, § 18, eff Jan. 1, 2007.

Editor's Note — The preamble to Laws, 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2005, ch. 501, § 18.

Amendment Notes — The 2005 amendment rewrote (2); and substituted "currently" for "presently" in the first sentences of (6) and (10).

JUDICIAL DECISIONS

I. In general.

1. In general.

Trial court properly dismissed individuals' complaint against the Supreme Court chief justice for appointing a special chancellor to hear outstanding matters regarding two underlying cases as the chief justice enjoyed judicial immunity and the appointment was a judicial act. Vinson v. Prather, 879 So. 2d 1053 (Miss. Ct. App. 2004).

ATTORNEY GENERAL OPINIONS

Unless the Supreme Court order appointing a county court judge as special judge specifies otherwise, such county judge would continue to serve in the capacity of a special judge even when his/her elected term ends. Floyd, Oct. 18, 2002, A.G. Op. #02-0595.

Pursuant to subsection (14) of this section, special judges receive compensation from the Department of Finance and Ad-

ministration. Floyd, Oct. 18, 2002, A.G. Op. #02-0595.

A special judge is entitled to the same power and authority as a regularly elected judge and would be able to carry a firearm under the provisions of § 97-37-7. Floyd, Oct. 18, 2002, A.G. Op. #02-0595.

A special judge would be able to conduct marriage ceremonies under the same authority and limitations as a judge in the office to which he has been appointed. Floyd, Oct. 18, 2002, A.G. Op. #02-0595.

A practicing attorney selected as a special judge for service on the Supreme Court may remain of counsel in all cases presently pending in the state and federal courts. However, pursuant to § 9-1-25 which applies to any judge of the Supreme Court, a special judge may not be engaged in the practice of law and, therefore, may not practice in any of the state courts during his tenure as a special judge. A special judge may, pursuant to the same statute, practice in the federal courts in any case in which he or she was engaged when appointed. Hurst, May, 21, 2004, A.G. Op. 04-0180.

Assignment of causes or matters to a county judge pursuant to § 9-9-35 is by consent of the county judge. Therefore, the latter has discretion is accepting assignments while the former does not appear to have the same authority. Yerger, July 23, 2004, A.G. Op. 04-0312.

RESEARCH REFERENCES

Law Reviews. Recent Trends in Mississippi Judicial Rule Making: Court Power, Judicial Recusals, and Expert Testimony, 23 Miss. C. L. Rev. 1, Fall, 2003.

CHAPTER 3

Supreme Court

GENERAL PROVISIONS

§ 9-3-9. Jurisdiction of the court.

JUDICIAL DECISIONS

1. Jurisdiction in general.
12. Matters reviewable in general.
43. Disposition of appeal.
47. —Dismissal of appeal.

1. Jurisdiction in general.

Jury did not return proper verdict as it was instructed to find for either the husband and wife or the driver, but by its verdict, the jury did neither; only then was the circuit judge authorized to enter a judgment upon that verdict, and since there was no proper verdict, it was improper for the circuit judge to enter a final judgment, and the appellate court did not have jurisdiction under Miss. Code Ann. § 9-3-9. Baham v. Sullivan, 924 So. 2d 580 (Miss. Ct. App. 2005).

12. Matters reviewable in general.

Defendant's double jeopardy claim was properly before the appellate court because it was considered a final judgment pursuant to Miss. Code Ann. § 11-51-3. Roberson v. State, 856 So. 2d 532 (Miss. Ct. App. 2003), cert. denied, 859 So. 2d 1017 (Miss. 2003).

43. Disposition of appeal.

47. —Dismissal of appeal.

Appeal from a decision in an election contest concerning a primary mayoral race was dismissed for lack of jurisdiction under Miss. Code Ann. § 9-3-9 because documents required under Miss. Code Ann. § 23-15-927 were not included in the appellate record. Moore v. Parker, — So. 2d —, 2007 Miss. LEXIS 127 (Miss. Mar. 8, 2007), opinion withdrawn by, substituted opinion at 962 So. 2d 558, 2007 Miss. LEXIS 476 (Miss. 2007).

RULE-MAKING

§ 9-3-61. General rule-making power vested in Supreme Court.

RESEARCH REFERENCES

Law Reviews. Recent Trends in Mississippi Judicial Rule Making: Court Power, Judicial Recusals, and Expert Testimony, 23 Miss. C. L. Rev. 1, Fall, 2003.

CHAPTER 4

Court of Appeals of the State of Mississippi

SEC.

§ 9-4-7. Structure and personnel of court.

(1) The Court of Appeals shall be subject to the administrative policies and procedures as may be established by the Supreme Court, including docket control of the Court of Appeals cases. Whenever feasible, and subject to approval of the Supreme Court, the administrative structure of the Supreme Court shall also support the Court of Appeals.

(2) The Clerk of the Supreme Court shall be the Clerk of the Court of Appeals and appointment of employees by the Court of Appeals shall be governed by personnel policies adopted and approved by the Administrative Office of the Courts. Whenever feasible and approved by the Supreme Court, employees of the Supreme Court shall also serve the Court of Appeals. The records of the Court of Appeals shall be kept by the Supreme Court Clerk or a deputy of the clerk.

(3) The Chief Justice of the Supreme Court shall appoint a Chief Judge of the Court of Appeals for a term of four (4) years, and the person so named shall be eligible for reappointment, subject to the discretion of the Chief Justice.

(4) The Chief Justice may assign one or more Court of Appeals Judges to serve as lower court trial judges to provide docket relief as he deems necessary.

(5) The Court of Appeals shall be authorized to employ an Opinion Editor of the Court of Appeals.

SOURCES: Laws, 1993, ch. 518, § 4, eff July 13, 1993 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the enactment of this section); Laws, 2007, ch. 551, § 1, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment added (5).

§ 9-4-13. Salaries of court and its personnel.

(1) The judges of the Court of Appeals shall receive salaries as provided for in Section 25-3-35, shall be reimbursed for mileage expenses incurred in performing their duties at the rate authorized by law for public officials and employees as provided for in Section 25-3-41, and shall receive an expense allowance as provided for in Section 25-3-43.

(2) Staff attorneys, law clerks, the opinion editor and all other employees of the Court of Appeals shall be of the same grade classification as Supreme Court employees performing the same or similar duties.

SOURCES: Laws, 1993, ch. 518, § 7, eff July 13, 1993 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the enactment of this section); Laws, 1999, ch. 532, § 2; Laws, 2007, ch. 551, § 2, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment, in (2), inserted "the opinion editor," and made a minor stylistic change.

CHAPTER 5

Chancery Courts

CHANCELLORS, DISTRICTS AND TERMS

§ 9-5-1. Chancellors; election, holding of court terms, terms of office, and residency.

Editor's Note — The constitutional amendment to Article 6, § 153 proposed by Laws of 2002, ch. 713, was defeated by the voters on November 5, 2002.

§ 9-5-7. First district; number of chancellors.

(1) There shall be four (4) chancellors for the First Chancery Court District.

(2) For purposes of appointment and election, the four (4) chancellorships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One," "Place Two," "Place Three" and "Place Four." The chancellor to fill Place One shall be a resident of Alcorn, Prentiss or Tishomingo County. The chancellors to fill Place Two and Place Three shall be a resident of Itawamba, Lee, Monroe, Pontotoc or Union County. The chancellor to fill Place Four shall be a resident of any county in the district. Election of the four (4) offices of chancellor shall be by election to be held in every county within the First Chancery Court District of Mississippi.

SOURCES: Codes, 1942, § 1216.1; Laws, 1968, ch. 314, §§ 1-4; Laws, 1974, ch. 373, § 1; Laws, 1994, ch. 564, § 4; Laws, 2005, ch. 501, § 1, eff Jan. 1, 2007.

Editor's Note — The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2005, ch. 501, § 1.

Amendment Notes — The 2005 amendment substituted "four (4) chancellors" for "three (3) chancellors" in (1); and added (2).

§ 9-5-13. Third district; number of chancellors; number and election of chancellors of subdistricts.

(1) There shall be three (3) chancellors for the Third Chancery Court District.

(2)(a) The chancellor of Subdistrict 3-1 shall be elected from DeSoto County. The two (2) chancellors of Subdistrict 3-2 shall be elected from Grenada County, Montgomery County, Panola County, Tate County and Yalobusha County.

(b) For purposes of appointment and election, the three (3) chancellorships shall be separate and distinct. The chancellorship in Subdistrict 3-1 shall be denominated only as "Place One," and the chancellorships in Subdistrict 3-2 shall be denominated only as "Place Two" and "Place Three."

SOURCES: Codes, 1942, § 1218.1; Laws, 1970, ch. 325, §§ 1-4, eff from; Laws, 1994, ch. 564, § 7; Laws, 2005, ch. 501, § 2, eff Jan. 1, 2007.

Editor's Note — The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2005, ch. 501, § 2.

Amendment Notes — The 2005 amendment added (2)(b).

§ 9-5-22. Sixth district; number of chancellors.

(1) There shall be two (2) chancellors for the Sixth Chancery Court District.

(2) For purposes of appointment and election, the two (2) chancellorships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One" and "Place Two."

SOURCES: Laws, 1974, ch. 371; Laws, 1994, ch. 564, § 12; Laws, 2005, ch. 501, § 3, eff Jan. 1, 2007.

Editor's Note — The preamble to Laws, 2005 of ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2005, ch. 501, § 3.

Amendment Notes — The 2005 amendment added (2).

§ 9-5-23. Seventh district; composition.

JUDICIAL DECISIONS

1. Jurisdiction.

Separate maintenance was related to the transaction forming the basis of a former husband's complaint for divorce as he conceded that he sought a divorce in Florida in order to avoid or cease his separate maintenance obligation in Mississippi; in his Florida complaint, the husband asserted that no alimony was sought. To the contrary, the Mississippi separate maintenance orders showed a basis for a possible award of alimony, and the former wife's motion to enforce the Mississippi orders did not waive personal jurisdiction for alimony purposes. Because the Florida court did not obtain personal jurisdiction over the former wife, and its judgment was not res judicata over her claim for alimony, the issue of alimony was properly before a chancery court in Mississippi. Lofton v. Lofton, 924 So. 2d 596 (Miss. Ct. App. 2006).

§ 9-5-25. Seventh district; number and election of chancellors.

[Until January 1, 2011, this section shall read as follows:]

There shall be two (2) chancellors for the Seventh Chancery Court District. One (1) chancellor shall be elected from each subdistrict.

[From and after January 1, 2011, this section shall read as follows:]

There shall be three (3) chancellors for the Seventh Chancery Court District. The three (3) chancellorships shall be separate and distinct. One (1) chancellor shall be elected from Subdistrict 7-1 and shall be denominated for purposes of appointment and election only as "Place One," and two (2) chancellors shall be elected from Subdistrict 7-2 and shall be denominated for purposes of appointment and election only as "Place Two" and "Place Three."

SOURCES: Codes, 1942, § 1222.1; Laws, 1968, ch. 317, § 2; Laws, 1994, ch. 564, § 14; Laws, 2005, ch. 501, § 4; Laws, 2010, ch. 438, § 2, eff _____ (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws 2005 of ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2005, ch. 501, § 4.

Laws of 2010, ch. 438, §§ 3 and 4 provide:

"SECTION 3. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 4. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

As of July 12, 2011, preclearance has not been received.

Amendment Notes — The 2005 amendment provided for two versions of the section effective until January 1, 2011, and effective from and after January 1, 2011; in the version effective from and after January 1, 2011, rewrote the section.

The 2010 amendment, in the second version, effective January 1, 2011, rewrote the section.

ATTORNEY GENERAL OPINIONS

Senate Bill 2339 of 2005 (Laws of 2005, ch. 501) does not, by its express terms, amend, modify or repeal Sections 9-5-255 and 41-21-61 (a). Miller, Aug. 2, 2005, A.G. Op. 05-0206.

§ 9-5-36. Tenth district; number and election of chancellors; residence.

(1) There shall be four (4) chancellors for the Tenth Chancery Court District.

(2) For purposes of appointment and election, the four (4) chancellorships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One," "Place Two," "Place Three" and "Place Four." The chancellor to fill Place One and Place Four shall be a resident of any county in the district. The chancellor to fill Place Two shall be a resident of Lamar, Marion, Pearl River or Perry County. The chancellor to fill Place Three shall be a resident of Forrest County. Election of the four (4) offices of chancellor shall be by election to be held in every county within the Tenth Chancery Court District of Mississippi.

SOURCES: Laws, 1975, ch. 325, § 1(1, 3); Laws, 1985, ch. 502, § 44; Laws, 1994, ch. 564, § 20; Laws, 2005, ch. 501, § 5, eff Jan. 1, 2007.

Editor's Note — The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial

election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2005, ch. 501, § 5.

Amendment Notes — The 2005 amendment substituted "four (4) chancellors" for "three (3) chancellors" in (1); and rewrote (2).

§ 9-5-40. Twelfth district; number of chancellors.

(1) There shall be two (2) judges for the Twelfth Chancery Court District.

(2) For purposes of appointment and election, the two (2) chancellorships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One" and "Place Two."

SOURCES: Laws, 1975, ch. 312; Laws, 1994, ch 564, § 24; Laws, 2005, ch. 501, § 6, eff Jan. 1, 2007.

Editor's Note — The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2005, ch. 501, § 6.

Amendment Notes — The 2005 amendment added (2).

§ 9-5-41. Thirteenth district; composition.

(1) The Thirteenth Chancery Court District shall be comprised of the following counties:

(a) Covington County;

(b) Jefferson Davis County;

(c) Lawrence County;

(d) Simpson County; and

(e) Smith County.

(2) There shall be two (2) chancellors for the Thirteenth Chancery Court District. For purposes of appointment and election, the two (2) chancellorships

shall be separate and distinct and denominated for purposes of appointment and election only as "Place One" and "Place Two."

SOURCES: Codes, 1942, § 1226.3; Laws, 1947, 1st Ex. ch. 10, § 8; Laws, 1964, ch. 306, § 1; Laws, 1972, ch. 384, § 1; Laws, 1985, ch. 502, § 14; Laws, 1994, ch. 564, § 25; Laws, 2005, ch. 501, § 7, eff Jan. 1, 2007.

Editor's Note — The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2005, ch. 501, § 7.

Amendment Notes — The 2005 amendment added (2).

§ 9-5-54. Eighteenth district; number of chancellors.

(1) There shall be two (2) chancellors for the Eighteenth Chancery Court District.

(2) For purposes of appointment and election, the two (2) chancellorships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One" and "Place Two."

SOURCES: Laws, 1979, ch. 387; Laws, 1994, ch. 564, § 33; Laws, 2005, ch. 501, § 8, eff Jan. 1, 2007.

Editor's Note — The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2005, ch. 501, § 8.

Amendment Notes — The 2005 amendment added (2).

JURISDICTION, POWERS AND AUTHORITY, VACATION MATTERS

§ 9-5-81. Jurisdiction of the chancery court, in general.

JUDICIAL DECISIONS

I. Matters in Equity.

5. Equitable causes.

In an action relating to waste disposal, a transfer to a chancery court was improper because equitable claims were not added until after the transfer, and the action had been pending in the circuit court for five years before the transfer was requested. Georgia-Pacific Corp. v. Mooney, 909 So. 2d 1081 (Miss. 2005).

18. Equitable suits and remedies.

19. —Accounting.

Chancery court had concurrent jurisdiction over a suit by the client of a real estate agency seeking damages and other relief at law based on an alleged failure to properly supervise an employee because the client also made a proper request for an equitable accounting; transfer of the action to a circuit court so that the realtors could try the case to a jury trial was not required because the relators did not have an absolute right to a jury trial in a civil action. RE/Max Real Estate Partners., Inc. v. Lindsley, 840 So. 2d 709 (Miss. 2003).

Where a nursing professor established a fiduciary relationship with a former employer, and the former employer had control of all the financial information involved in the relationship, a chancery court could properly order an accounting. Univ. Nursing Assocs., PLLC v. Phillips, 842 So. 2d 1270 (Miss. 2003).

II. Divorce and Alimony.

38. Jurisdiction in general.

Separate maintenance was related to the transaction forming the basis of a former husband's complaint for divorce as he conceded that he sought a divorce in Florida in order to avoid or cease his separate maintenance obligation in Mississippi; in his Florida complaint, the husband asserted that no alimony was sought. To the contrary, the Mississippi separate maintenance orders showed a basis for a possible award of alimony, and the former wife's motion to enforce the Mississippi orders did not waive personal jurisdiction for alimony purposes. Because the Florida court did not obtain personal jurisdiction over the former wife, and its judgment was not res judicata over her claim for alimony, the issue of alimony was properly before a chancery court in Mississippi. Lofton v. Lofton, 924 So. 2d 596 (Miss. Ct. App. 2006).

40. Separate maintenance.

Grant of a wife's petition for separate maintenance was upheld because the chancery court did not manifestly err in finding that the wife, although admittedly partly to blame for the couple's separation, did not substantially contribute to

the separation; considering each party's financial state and additional factors, the chancery court did not abuse its discretion in awarding $1,200 per month to the wife, even though this award was in excess of the husband's income after expenses. Tackett v. Tackett, 967 So. 2d 1264 (Miss. Ct. App. 2007).

VII. Other Cases Provided by Law.

49. Jurisdiction in general.

County youth court did not err in transferring what was a child custody case to the county chancery court, as the mother's allegation that her 10-month-old child was in need of supervision was insufficient to show the child was in need of supervision under the relevant statute, Miss. Code Ann. § 43-21-105(k), which required a child in need of supervision to have at least reached his seventh birthday; since there were also no allegations of abuse or neglect of the child, the case was a child custody case that fell under the jurisdiction of the county chancery court. In re L.D.M, 910 So. 2d 522 (Miss. 2005).

§ 9-5-83. Court may determine all matters in estates administered.

JUDICIAL DECISIONS

3. Jurisdiction in particular matters.

Beneficiaries' complaint focused on the administration of the trust, and they had labeled their claims as negligence, breach of contract, breach of fiduciary duty, and gross negligence; however, the bank's actions or inactions that were at issue arose solely from its capacity as trustee and any duty it might have had arose from its appointment as trustee, such that because the action sought to interpret the trustee's obligations under the terms of the trust, the trust was under the exclusive jurisdiction of the Warren County Chancery Court and had been since its inception. Trustmark Nat'l Bank v. Johnson, 865 So. 2d 1148 (Miss. 2004).

§ 9-5-87. Power to punish for violation of injunction.

The chancery court, or the chancellor in vacation, or judge granting the writ, shall have power to punish any person for breach of injunction, or any other order, decree, or process of the court, by fine or imprisonment, or both, or the chancellor or judge granting the writ may require bail for the appearance of the party at the next term of the court to answer for the contempt; but such person shall be first cited to appear and answer. And any person so punished by order of the chancellor in vacation, may on five (5) days' notice to the opposite party, apply to a judge of the Supreme Court, who, for good cause shown, may supersede the punishment until the meeting of the said chancery court.

At the discretion of the court, any person found in contempt for failure to pay child support and imprisoned therefor may be referred for placement in a state, county or municipal restitution, house arrest or restorative justice center or program, provided such person meets the qualifications prescribed in Section 99-37-19.

SOURCES: Codes, 1880, § 1846; 1892, § 509; 1906, § 560; Hemingway's 1917, § 320; 1930, § 367; 1942, § 1278; Laws, 2009, ch. 367, § 2, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment added the second paragraph.

JUDICIAL DECISIONS

2. Matters within power to punish for contempt.

Contemnor failed to comply with divorce decree, and a chancellor did not commit manifest error or abuse the chancery court's discretion by incarcerating the contemnor, as the chancellor's decision was supported by the record, which included the chancellor's findings that the contemnor was not credible; further, the divorce decree was not ambiguous, so the contemnor's argument that the contemnor could not obey because of the decree's alleged vagueness was rejected. Stribling v. Stribling, 960 So. 2d 556 (Miss. Ct. App. 2007).

§ 9-5-89. Guardian ad litem; appointment and compensation; effect of failure to appoint.

JUDICIAL DECISIONS

2. Minors.

Because the child's best interest was the court's "polestar" consideration in determining child custody, the importance of guardian ad litem appointments in child custody proceedings could not be overemphasized; in a case where a mother sought modification of child custody, and there was an allegation of abuse, it was mandatory that a guardian ad litem be appointed, under Miss. Code Ann. § 93-5-23 (Supp. 2002). Robison v. Lanford, 841 So. 2d 1119 (Miss. 2003).

CHANCERY CLERKS

SEC.

9-5-171. Destruction of records.

§ 9-5-131. Bond of clerk.

ATTORNEY GENERAL OPINIONS

There is no requirement in Section 9-5-131 et seq., which would require a chancery clerk to post foreclosure notices and execute an affidavit stating that the same was posted, nor is there such requirement or authority in Sections 25-7-9, 25-7-11, and 89-1-53 et. seq., however, pursuant to Sections 25-7-33 and 25-7-45, if a clerk chooses to post such notices, he may assess a fee of $ .25 for executing an affidavit stating that the same was posted. Gex, Mar. 14, 2003, A.G. Op. #03-0112.

§ 9-5-133. How clerk of chancery court may appoint deputies.

ATTORNEY GENERAL OPINIONS

There is no statutory authority for a chancery clerk to hire a public information officer. Crook, June 14, 2002, A.G. Op. #02-0304.

§ 9-5-137. Other duties of the clerk.

JUDICIAL DECISIONS

1. In general.

Former husband was unable to show a violation of U.S. Const. art. IV, § 1 or Miss. Code Ann. § 9-5-137 in a divorce action because the evidence demonstrated that he was served personally, and no hearing was commenced without adequate and timely process. Richardson v. Richardson, 856 So. 2d 426 (Miss. Ct. App. 2003).

§ 9-5-171. Destruction of records.

(1) The chancery clerk of each of the counties of the State of Mississippi, with the approval of the board of supervisors of such county, after an inventory has been made and checked by the board and an order spread on its minutes listing the reference, is authorized to dispose of records pursuant to a records control schedule approved by the Local Government Records Committee as provided in Section 25-60-1.

(2) No records which are in the process of being audited by the State Department of Audit or which are the basis of litigation shall be destroyed until at least twelve (12) months after final completion of the audits and litigation.

(3) Records may be filed and retained by electronic means as provided in Sections 9-1-51 through 9-1-57, whether the record is to be destroyed or not; provided, however, that destruction of records shall be carried out in accordance with Sections 25-59-21 and 25-59-27.

SOURCES: Codes, 1942, § 1261.5; Laws, 1952, ch. 208, §§ 1-3; Laws, 1966, ch. 337, §§ 1-3; Laws, 1987, ch. 420; Laws, 1994, ch. 521, § 11; Laws, 1996, ch. 537, § 7; Laws, 1998, ch. 439, § 1; Laws, 2006, ch. 495, § 5, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment rewrote the section to provide that records retention and destruction standards apply to all counties regardless of election.

FAMILY MASTERS

SEC.

§ 9-5-255. Family masters; appointment, qualifications, powers, and duties.

(1) Except as provided by subsection (9) of this section, the senior chancellor of each chancery court district in the state may apply to the Chief Justice of the Supreme Court for the appointment of one or more persons to serve as family masters in chancery in each of the counties or for all of the counties within the respective chancery court district if the senior chancellor states in writing that the chancery court district's docket is crowded enough to

warrant an appointment of a family master. The Chief Justice shall determine from the information provided by the senior chancellor if the need exists for the appointment of a family master. If the Chief Justice determines that the need exists, a family master shall be appointed. If the Chief Justice determines that the need does not exist, no family master shall be appointed.

(2) Family masters in chancery shall have the power to hear cases and recommend orders establishing, modifying and enforcing orders for support in matters referred to them by chancellors and judges of the circuit, county or family courts of such county. The family master in chancery shall have jurisdiction over paternity matters brought pursuant to the Mississippi Uniform Law on Paternity and referred to them by chancellors and judges of the circuit, county or family courts of such county. As used in this section, "order for support" shall have the same meaning as such term is defined in Section 93-11-101.

(3) In all cases in which an order for support has been established and the person to whom the support obligation is owed is a nonrelated Temporary Assistance for Needy Families (TANF) family on whose behalf the Department of Human Services is providing services, the family master in chancery or any other judge or court of competent jurisdiction shall, upon proper pleading by the department and upon appropriate proceedings conducted thereon, order that the department may recover and that the obligor shall be liable for reasonable attorney's fees at a minimum of Two Hundred Fifty Dollars ($250.00) or an amount set by the court and court costs which the department incurs in enforcing and collecting amounts of support obligation which exceed administrative fees collected and current support owed by the obligor.

(4) Persons appointed as family masters in chancery pursuant to this section shall meet and possess all of the qualifications required of chancery and circuit court judges of this state, shall remain in office at the pleasure of the appointing chancellor, and shall receive reasonable compensation for services rendered by them, as fixed by law, or allowed by the court. Family masters in chancery shall be paid out of any available funds budgeted by the board of supervisors of the county in which they serve; provided, however, in the event that a family master in chancery is appointed to serve in more than one county within a chancery court district, then the compensation and expenses of such master shall be equally apportioned among and paid by each of the counties in which such master serves. The chancery clerk shall issue to such persons a certificate of appointment.

(5) Family masters in chancery shall have power to administer oaths, to take the examination of witnesses in cases referred to them, to examine and report upon all matters referred to them, and they shall have all the powers in cases referred to them properly belonging to masters or commissioners in chancery according to the practice of equity courts as heretofore exercised.

(6) Family masters in chancery shall have power to issue subpoenas for witnesses to attend before them to testify in any matter referred to them or generally in the cause, and the subpoenas shall be executed in like manner as subpoenas issued by the clerk of the court. If any witness shall fail to appear,

the master shall proceed by process of attachment to compel the witness to attend and give evidence.

(7) Family masters in chancery are authorized and empowered to conduct original hearings on matters in such county referred to such masters by any chancellor or judge of such county.

(8) In all cases heard by masters pursuant to this section, such masters shall make a written report to the chancellor or judge who refers the case to him. Such chancellor or judge may accept, reject or modify, in whole or in part, the findings or recommendations made and reported by the master, and may recommit the matter to the master with instructions. In all cases referred to such master, initialing for approval by the master of a proposed decree shall be sufficient to constitute the master's report.

(9) Any chancellor required by this section to appoint a person or persons to serve as family masters in chancery may forego the requirement to appoint such masters or if family masters have been appointed, such chancellor may terminate such appointments and leave such positions vacant, only if an exemption from the United States Department of Health and Human Services is obtained for the county or counties involved. Such positions may remain vacant for as long as such exemption remains in effect.

SOURCES: Laws, 1985, ch. 518, § 11; Laws, 1986, ch. 474, § 1; Laws, 1989, ch. 440, § 3; Laws, 1994, ch. 564, § 75; Laws, 1997, ch. 316, § 14; Laws, 2003, ch. 514, § 7, eff from and after passage (approved Apr. 19, 2003.)

Amendment Notes — The 2003 amendment inserted "at a minimum of Two Hundred Fifty Dollars ($250.00) or an amount set by the court" following "reasonable attorney's fees" in (3).

ATTORNEY GENERAL OPINIONS

A county court judge may be appointed as a family master and receive additional compensation from the county beyond the compensation that is received for being a county court judge. Griffith, Dec. 6, 2002, A.G. Op. #02-0689.

The Chief Justice can execute a Memorandum of Understanding on behalf of all appointed family masters allowing the Child Support Maximization Project to use the monies paid to the family masters by the counties as a source for federal matching funds. Lackey, Nov. 15, 2004, A.G. Op. 04-0554.

CHAPTER 7

Circuit Courts

JUDGES, DISTRICTS, AND TERMS OF COURT

§ 9-7-1. Judges; election; holding of terms of court; term of office; residence.

Editor's Note — The constitutional amendment to Article 6, § 153 proposed by Laws of 2002, ch. 713, was defeated by the voters on November 5, 2002.

§ 9-7-3. Circuit court districts and terms of court; number of judges; powers and duties of judges.

ATTORNEY GENERAL OPINIONS

Since § 9-9-35 specifically governs the assignment of cases to a county judge when justified by an overcrowded docket, controls over the more general provision of this section stating that the senior judge has the authority to assign causes and dockets. Yerger, July 23, 2004, A.G. Op. 04-0312.

§ 9-7-5. First district; composition.

JUDICIAL DECISIONS

1. In general.

Defendant's offense was charged to have been committed in Lee County, which was in the First Circuit Court District, Miss. Code Ann. § 9-7-5, and any other circuit court in the First Circuit Court District could have accepted defendant's guilty plea, Miss. Code Ann. § 99-15-24; the Monroe County Circuit Court was in the First Circuit Court District, Miss. Code Ann. § 9-7-5, and therefore the Monroe County Circuit Court was an appropriate venue for defendant's guilty plea to the Lee County charge, and thus all of defendant's arguments dependent on the impropriety of the venue for the plea were without merit. Garner v. State, 944 So. 2d 934 (Miss. Ct. App. 2006), writ of certiorari dismissed by 951 So. 2d 563, 2007 Miss. LEXIS 534 (Miss. 2007).

§ 9-7-7. First district; number of judges.

(1) There shall be four (4) judges for the First Circuit Court District.

(2) For purposes of appointment and election, the four (4) judgeships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One," "Place Two," "Place Three" and "Place Four." The judge to fill Place One shall be a resident of Alcorn, Prentiss or Tishomingo County. The judges to fill Place Two and Place Three shall be a resident of Itawamba, Lee, Monroe or Pontotoc County. The judge to fill Place Four shall be a resident of any county in the district. Election of the

four (4) offices of judge shall be by election to be held in every county within the First Circuit Court District.

SOURCES: Codes, 1942, § 1395.1; Laws, 1968, ch. 325, §§ 1-4; Laws, 1974, ch. 373, § 2; Laws, 1994, ch. 564, § 40; Laws, 2005, ch. 501, § 9, eff Jan. 1, 2007.

Editor's Note — The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2005, ch. 501, § 9.

Amendment Notes — The 2005 amendment substituted "four (4) judges" for "three (3) judges" in (1); and added (2).

§ 9-7-14. Third district; number of judges.

(1) There shall be three (3) circuit judges for the Third Circuit Court District.

(2) For purposes of appointment and election, the three (3) judgeships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One," "Place Two" and "Place Three." The judge to fill "Place One" shall be a resident of Calhoun, Chickasaw, Lafayette or Union Counties. The judge to fill "Place Two" shall be a resident of Benton, Marshall or Tippah County. The judge to fill "Place Three" shall be a resident of any county in the district.

SOURCES: Laws, 1975, ch. 474, § 1; Laws, 1994, ch. 564, § 44; Laws, 2005, ch. 501, § 10, eff Jan. 1, 2007.

Editor's Note — The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial

election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2005, ch. 501, § 10.

Amendment Notes — The 2005 amendment substituted "three (3) judges" for "two (2) judges" in (1); and added (2).

§ 9-7-20. Fifth district; number of judges.

(1) There shall be two (2) judges for the Fifth Circuit Court District.

(2) For purposes of appointment and election, the two (2) judgeships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One" and "Place Two."

SOURCES: Laws, 1978, ch. 324, § 1; Laws, 1985, ch. 502, § 49; Laws, 1994, ch. 564, § 48; Laws, 2005, ch. 501, § 11, eff Jan. 1, 2007.

Editor's Note — The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2005, ch. 501, § 11.

Amendment Notes — The 2005 amendment added (2).

§ 9-7-32. Tenth district; number of judges.

(1) There shall be two (2) judges for the Tenth Circuit Court District.

(2) For purposes of appointment and election, the two (2) judgeships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One" and "Place Two."

SOURCES: Laws, 1978, ch. 360, § 1; Laws, 1985, ch. 502, § 52; Laws, 1994, ch. 564, § 56; Laws, 2005, ch. 501, § 12, eff Jan. 1, 2007.

Editor's Note — The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2005, ch. 501, § 12.

Amendment Notes — The 2005 amendment added (2).

§ 9-7-39. Fourteenth district; composition; number of judges.

(1) The Fourteenth Circuit Court District shall be comprised of the following counties:

(a) Lincoln County;

(b) Pike County; and

(c) Walthall County.

(2)(a) There shall be two (2) judges for the Fourteenth Circuit Court District.

(b) For purposes of appointment and election, the two (2) judgeships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One" and "Place Two."

SOURCES: Codes, 1930, § 473; 1942, § 1408; Laws, 1931, ch. 37; Laws, 1940, ch. 225; Laws, 1971, ch. 459; Laws, 1973, ch. 360, § 1; Laws, 1983, ch. 499, § 12; Laws, 1985, ch. 502, § 36; Laws, 1994, ch. 564, § 61; Laws, 2005, ch. 501, § 13, eff Jan. 1, 2007.

Editor's Note — The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2005, ch. 501, § 13.

Amendment Notes — The 2005 amendment added (2)(b).

§ 9-7-42. Fifteenth district; number of judges.

(1) There shall be two (2) judges for the Fifteenth Circuit Court District.

(2) For purposes of appointment and election, the two (2) judgeships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One" and "Place Two."

SOURCES: Laws, 1982, ch. 417, § 2; Laws, 1985, ch. 502, § 54; Laws, 1994, ch. 564, § 63; Laws, 2005, ch. 501, § 14, eff Jan. 1, 2007.

Editor's Note — The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2005, ch. 501, § 14.

Amendment Notes — The 2005 amendment added (2).

§ 9-7-44. Sixteenth district; number of judges.

[Until January 1, 2011, this section shall read as follows:]

(1) There shall be two (2) judges for the Sixteenth Circuit Court District.

(2) For purposes of appointment and election, the two (2) judgeships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One" and "Place Two."

[From and after January 1, 2011, this section shall read as follows:]

(1) There shall be three (3) judges for the Sixteenth Circuit Court District.

(2) For purposes of appointment and election, the three (3) judgeships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One," "Place Two" and "Place Three." The judge to fill Place One shall be a resident of Lowndes County. The judge to fill Place Two shall be a resident of Oktibbeha County. The judge to fill Place Three shall be a resident of either Clay or Noxubee County. Election of the three (3) offices of

judge shall be by election to be held in every county within the Sixteenth Circuit Court District.

SOURCES: Laws, 1975, ch. 344; Laws, 1994, ch. 564, § 65; Laws, 2005, ch. 501, § 15, eff Jan. 1, 2007.

Editor's Note — The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2005, ch. 501, § 15.

Amendment Notes — The 2005 amendment provided for versions of the section effective from January 1, 2007 until January 1, 2011, and effective from and after January 1, 2011; in the version effective until January 1, 2011, added (2); and in the version effective from and after January 1, 2011, substituted "three (3) judges" for "two (2) judges" in (1); and added (2).

§ 9-7-46. Seventeenth district; number and election of judges.

[Until January 1, 2011, this section shall read as follows:]

(1) There shall be three (3) circuit judges for the Seventeenth Circuit Court District.

(2) For the purpose of appointment and election, the three (3) judgeships shall be separate and distinct, and one (1) judge shall be elected from Subdistrict 17-1 and two (2) judges shall be elected from Subdistrict 17-2. For purposes of appointment and election, the three (3) judgeships shall be separate and distinct. The two (2) judgeships in Subdistrict 17-2 shall be denominated as "Place One" and "Place Two," and the judgeship in Subdistrict 17-1 shall be denominated as "Place Three."

[From and after January 1, 2011, this section shall read as follows:]

(1) There shall be four (4) circuit judges for the Seventeenth Circuit Court District.

(2) For the purpose of appointment and election, the four (4)judge ships shall be separate and distinct, and one (1) judge shall be elected from Subdistrict 17-1, two (2) judges shall be elected from Subdistrict 17-2, and one (1) judge shall be elected from every county in the district. The two (2) judgeships in Subdistrict 17-2 shall be denominated as "Place One" and "Place

Two," the judgeship in Subdistrict 17-1 shall be denominated as "Place Three," and the at-large judgeship shall be denominated as "Place Four."

SOURCES: Laws, 1982, ch. 413; Laws, 1985, ch. 502, § 55; Laws, 1994, ch 564, § 67; Laws, 2005, ch. 501, § 16, eff Jan. 1, 2007.

Editor's Note — The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2005, ch. 501, § 16.

Amendment Notes — The 2005 amendment provided for versions of the section effective from January 1, 2007 until January 1, 2011, and effective from and after January 1, 2011; in the version effective until January 1, 2011, added the second and third sentences in (2); and in the version effective from and after January 1, 2011, substituted "four (4) judges" for "three (3) judges" in (1); and rewrote (2).

§ 9-7-47. Eighteenth district; composition.

The Eighteenth Circuit Court District shall be Jones County.

SOURCES: Codes, 1942, § 1411.5; Laws, 1954, ch. 254, §§ 2-4, 7; Laws, 1962, ch. 295; Laws, 1983, ch. 499, § 16; Laws, 1985, ch. 502, § 40; Laws, 1994, ch. 564, § 68, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the amendment of this section).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the source line of this section. The words "ch. 254" were substituted for "ch. 250" following "Laws, 1954."

§ 9-7-54. Twentieth district; number of judges.

(1) There shall be two (2) judges for the Twentieth Circuit Court District.

(2) For purposes of appointment and election, the two (2) judgeships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One" and "Place Two."

SOURCES: Laws, 1982, ch. 481, § 2; Laws, 1985, ch. 502, § 57; Laws, 1994, ch. 564, § 72; Laws, 2005, ch. 501, § 17, eff Jan. 1, 2007.

Editor's Note — The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2005, ch. 501, § 17.

Amendment Notes — The 2005 amendment added (2).

JURISDICTION, POWERS AND AUTHORITY

§ 9-7-81. Jurisdiction; general enumeration of subjects.

JUDICIAL DECISIONS

1. Jurisdiction in general.
2. Original jurisdiction.
5. Appellate jurisdiction.

1. Jurisdiction in general.

Mississippi justice courts and the circuit courts shared concurrent jurisdiction in matters in which the amount in controversy exceeded $200 but not $2,500. Arant v. Hubbard, 824 So. 2d 611 (Miss. 2002).

2. Original jurisdiction.

Dismissal of the insured's action against her insurer in Mississippi for bad faith was improper where there was no personal or subject matter jurisdiction over the insurer, Miss. Const. art. 6, § 156, Miss Code Ann. § 9-7-81; none of the parties were Mississippi residents, none of the actions creating the dispute occurred in Mississippi, and Mississippi law would not have governed the litigation. Hogrobrooks v. Progressive Direct, 858 So. 2d 913 (Miss. Ct. App. 2003).

Where the non-movant's complaint alleged seven counts at law and one equitable count seeking an accounting, the chancery court erred in refusing to transfer the case to the circuit court; the non-movant failed to allege a true claim for an accounting, as the non-movant sought an accounting of the non-movant rather than an accounting of the movants, and, therefore, the circuit court had jurisdiction pursuant to Miss. Const. art. VI, § 156 and Miss. Code Ann. § 9-7-81. Briggs & Stratton Corp. v. Smith, 854 So. 2d 1045 (Miss. 2003).

5. Appellate jurisdiction.

Circuit court lost jurisdiction over an employee's action where judicial review was sought of a decision by the Mississippi Workers' Compensation Commission that denied her claim for workers' compensation benefits when the employee failed to file a timely appeal from the same court's order affirming the Commission's decision; the circuit court erred in vacating its own order and replacing it with a new and contrary order. Univ. of S. Miss. v.

Gillis, 872 So. 2d 60 (Miss. Ct. App. 2003), cert. denied, 873 So. 2d 1032 (Miss. 2004).

CIRCUIT CLERKS

SEC.

§ 9-7-123. Appointment of deputy clerks; oath; bond.

(1) The clerk of the circuit court shall have power, with the approbation of the court, or of the judge in vacation, to appoint one or more deputies, who shall take the oath of office and may give bond, and who thereupon shall have power to do and perform all the acts and duties which their principal may lawfully do; such approval, when given by the judge in vacation, shall be in writing, and shall be entered on the minutes of the court at the next term.

(2) Each deputy clerk of the circuit court, before he enters upon the duties of the appointment, shall take the oath of office, and shall give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty equal to three percent (3%) of the sum of all the state and county taxes shown by the assessment rolls and the levies to have been collectible in the county for the year immediately preceding the commencement of the term of office for the circuit clerk. However, the amount of such bond shall not be less than Fifty Thousand Dollars ($50,000.00) nor more than One Hundred Thousand Dollars ($100,000.00). The bond shall cover all monies coming into the hands of the deputy clerk by law or order of the court. The board of supervisors, in its discretion, may pay the bond on behalf of the deputy clerk.

SOURCES: Codes, Hutchinson's 1848, ch. 27, class 2, art. 1 (12), class 3, art. 1 (10); 1857, ch. 61, art. 17, ch. 62, art. 13; 1871, §§ 551, 990; 1880, § 2281; 1892, § 930; 1906, § 1006; Hemingway's 1917, § 726; 1930, § 747; 1942, § 1662; Laws, 1999, ch. 380, § 1; Laws, 2009, ch. 467, § 1, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment, in (2), substituted "shall give bond" for "may give bond" in the first sentence, and rewrote the second sentence.

JUDICIAL DECISIONS

1. In general.

Since circuit clerks were authorized by Miss. Code Ann. § 9-7-123 to hire deputy clerks, Miss. Code Ann. § 9-7-126 authorized circuit clerks to supervise the public duties of the deputy clerks who were deemed to be employees of the county, and Miss. Code Ann. § 9-7-126 required that county boards of supervisors defray the salaries of deputy clerks with funds from the county treasury, the fact that circuit clerks received county funds to pay deputies and that clerks controlled those county employees strongly weighed in favor of finding that clerks were county agents for purposes of 18 U.S.C.S. § 666(d)(1). United States v. Harris, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 50575

(S.D. Miss. July 11, 2007), affirmed by 296 Fed. Appx. 402, 2008 U.S. App. LEXIS 22020 (5th Cir. Miss. 2008).

ATTORNEY GENERAL OPINIONS

Only the clerk and his or her sworn deputy clerk have the authority to keep or make entries to the general docket, whether that docket be bound book or on computer. Ashley, Jan. 31, 2003, A.G. Op. #03-0755.

§ 9-7-126. Additional remuneration to circuit court clerks for salaries of deputy circuit clerks.

(1) There shall be allowed out of the county treasury from the general county funds, or any other available funds payable monthly by the board of supervisors of the county, not less than the following amounts for the purposes of defraying the salaries of deputy circuit clerks:

Class 1 and 2 counties not less than Four Hundred Fifty Dollars ($450.00) per month;

Class 3 and 4 counties not less than Three Hundred Fifty Dollars ($350.00) per month;

Class 5, 6, 7 and 8 counties not less than Two Hundred Fifty Dollars ($250.00) per month.

The above and foregoing allowances shall be for the purposes of defraying the salaries of deputy circuit clerks provided such allowance, and upon written request of the circuit clerk, shall be paid directly to the deputy circuit clerk designated by him, in the absence of which request, the allowance shall be paid monthly to the circuit clerk. Deputy circuit clerks employed under authority of this section shall be deemed employees of the county. The clerk shall select and supervise their public duties.

(2) This section shall not apply to any county having a county court except that in any county in which U.S. Highway 49 and Mississippi Highway 6 intersect, any county in which U.S. Highway 61 and Mississippi Highway 4 intersect, any county having a population in excess of fifty-seven thousand (57,000) and which is traversed by the Tennessee-Tombigbee Waterway or whose county seat is within twenty (20) miles of the Tennessee-Tombigbee Waterway, any county bordering the State of Tennessee and the Mississippi River, any county in which U.S. Highway 61 and U.S. Highway 82 intersect, any county in which U.S. Highway 61 and Mississippi Highway 8 intersect, any county in which U.S. Highway 82 and U.S. Highway 49E intersect, any county in which U.S. Highway 49 and Mississippi Highway 16 intersect and which is traversed by Interstate Highway 55, and any county in which Highway 589 and Highway 98 intersect, the provisions of this section shall be discretionary with the respective board of supervisors.

SOURCES: Codes, 1942, § 3934.9; Laws, 1972, ch. 467, §§ 1, 2; Laws, 1975, ch. 424; Laws, 1986, ch. 402; Laws, 1994, ch. 499, § 1; Laws, 1999, ch. 496, § 1; Laws, 2009, ch. 422, § 1, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment added "and any county in which Highway 589 and Highway 98 intersect" preceding "the provisions of this section" near the end of (2); and made a minor stylistic change.

JUDICIAL DECISIONS

1. In general.
2. Miscellaneous.

1. In general.

In a case in which defendant, a former county circuit clerk, was convicted of embezzlement, in violation of 18 U.S.C.S. § 666(a)(1), he argued unsuccessfully that the district court erred by refusing to dismiss the embezzlement counts because he was not an agent of a county under 18 U.S.C.S. § 666(d)(1). Since (1) defendant directed and controlled deputy clerks, who were county employees; (2) as an officer of the county, he collected money belonging to the county; and (3) he was authorized to act on behalf of the county in directing county employees, defendant was an agent of the county. United States v. Harris, 2008 U.S. App. LEXIS 22020 (5th Cir. Oct. 21, 2008).

Since circuit clerks were authorized by Miss. Code Ann. § 9-7-123 to hire deputy clerks, Miss. Code Ann. § 9-7-126 authorized circuit clerks to supervise the public duties of the deputy clerks who were deemed to be employees of the county, and Miss. Code Ann. § 9-7-126 required that county boards of supervisors defray the salaries of deputy clerks with funds from the county treasury, the fact that circuit clerks received county funds to pay deputies and that clerks controlled those county employees strongly weighed in favor of finding that clerks were county agents for purposes of 18 U.S.C.S. § 666(d)(1). United States v. Harris, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 50575 (S.D. Miss. July 11, 2007), affirmed by 296 Fed. Appx. 402, 2008 U.S. App. LEXIS 22020 (5th Cir. Miss. 2008).

2. Miscellaneous.

In a case in which defendant, a former county circuit clerk, was convicted of embezzlement, in violation of 18 U.S.C.S. § 666(a)(1), his reliance on the Phillips decision, a Louisiana case, was misplaced. In the Phillips case, defendant, a former tax assessor of a parish, was not an agent of the parish under 18 U.S.C.S. § § 666(d)(1), because Louisiana law completely separated the tax assessor's office from the parish government; however, in Mississippi, circuit clerks were not completely separated from county governments in Mississippi, and the Phillips decision was not applicable in the present case. United States v. Harris, 2008 U.S. App. LEXIS 22020 (5th Cir. Oct. 21, 2008).

ATTORNEY GENERAL OPINIONS

For purposes of the nepotism statute, the circuit clerk is the is the appointing authority of a deputy who is being paid by the board of supervisors. Dulaney, Aug. 27, 2004, A.G. Op. 04-0413.

If the Board of Supervisors chooses to pay only the $450.00 required in Miss. Code Ann. § 9-7-126 for a deputy clerk's salary, the employer's part of the social security withholding and Public Employee Retirement Systems contributions on the $450.00 must be paid by the county, and not by the circuit clerk. Bounds, March 9, 2007, A.G. Op. #07-00083, 2007 Miss. AG LEXIS 98.

DOCKETS

§ 9-7-171. General docket.

ATTORNEY GENERAL OPINIONS

Only the clerk and his or her sworn deputy clerk have the authority to keep or make entries to the general docket, whether that docket be bound book or on computer. Ashley, Jan. 31, 2003, A.G. Op. #03-0755.

CIRCUIT COURT COMMUNITY CORRECTIONS ACT OF 2010

SEC.

§ 9-7-201. Circuit Court Community Corrections Program pilot program authorized; Circuit Court Community Corrections Commissions; membership, terms of service, authority, rules for conduct; definitions; placement by judicial officer of eligible person in or under supervision of Circuit Court Community Corrections Program; collection of fees from program participants [Repealed effective July 1, 2013].

(1) This section shall be known as the "Circuit Court Community Corrections Act of 2010."

(2) The community corrections pilot program authorized by this section shall be known as the Circuit Court Community Corrections Program.

(3)(a) The Circuit Court Community Corrections Commissions shall oversee and operate all programs, services and administrative functions of the applicable Circuit Court Community Corrections Program. The number of members comprising each commission shall be comprised of the following individuals:

(i) The district attorney of the circuit court district, or his designee;

(ii) The sheriffs of each county in the circuit court district, or their designee;

(iii) The Commissioner of the Mississippi Department of Corrections, or his designee;

(iv) A member of the criminal defense bar practicing in the district, to be appointed by the senior circuit judge; and

(v) Two (2) members to be appointed by the senior circuit judge from a list of individuals recommended by the district attorney, the sheriffs and the Commissioner of Corrections.

(b) The term of service of each commission shall be commensurate with the elected terms of the district attorney and sheriffs and shall expire at the end of their regular terms of office. A new commission shall be appointed in the manner directed by this section at the beginning of each new regular term of office for the district attorney and sheriffs.

(c) Each commission shall have full authority to implement this section and superintend all administrative functions, services and programs of the Circuit Court Community Corrections Program. The commission shall select from its membership a president and other officers as needed, and may appoint an executive director, who shall serve at the pleasure of the commission.

(d) Each commission shall make and publish its own rules for the conduct of its affairs. Commission meetings shall be held at least once a quarter, at the call of the president, or upon the request of any three (3) commission members.

(e) All action of a commission shall require the approval of a majority of the members of the commission.

(4) Each commission shall be vested with all authority necessary to create or manage, or both, all of the following:

(a) A supervised nonresidential community service program designed to provide close supervision of the participant's activities, compliance with conditions of any suspended sentence, performance of community service work, and payment of restitution and other court-ordered monies.

(b) A supervised post-adjudication rehabilitation program designed to provide close supervision of the participant's activities, compliance with conditions of any suspended sentence, and payment of restitution and other court-ordered monies.

(c) A supervised nonresidential program designed to provide close supervision of the participant's activities, compliance with conditions of any suspended sentence, performance of community service work, and payment of restitution and other court-ordered monies for those participants who have entered a plea of guilt but had his or her sentence deferred pursuant to Section 99-15-26.

(d) An educational, vocational and job fair program designed to enable participants to obtain the educational and vocational skills necessary to find and retain employment and which will provide assistance to participants in exploring employment opportunities.

(e) A residential rehabilitation and work release program for certain inmates incarcerated in county jails for the purpose of working at gainful employment, enabling them to pay for the cost of their crimes, and to provide a means for them to pay the cost of their supervision from their gross earnings.

(f) A reentry residential and nonresidential rehabilitation and work release program for inmates being released from the custody of the Mississippi Department of Corrections which will assist participants in reentry to noncustodial life and in finding employment opportunities.

(g) Support services for juvenile and adult drug courts, deferred prosecution and pretrial diversion programs as authorized by Sections 99-15-101 through 99-15-127 in participating counties.

(5) The commission shall also be vested with all authority necessary to implement this section, to include, but not be limited to, those necessary to do all of the following:

(a) To create or remove employment positions, set or alter pay scales, employ, direct, regulate, supervise and dismiss personnel and obtain fidelity bonds for the faithful performance of the personnel's duties.

(b) To buy, sell, lease or otherwise hold real or personal property in its own name.

(c) To contract with other persons or entities for the provision of goods and services required by it, on terms and conditions as may be convenient, as allowed by the laws and regulations concerning purchases made by public bodies in the State of Mississippi.

(d) To charge reasonable fees to the participants in any Circuit Court Community Corrections Program for any services they receive.

(e) To open and maintain financial accounts.

(f) To hire legal, accounting and other professions to aid in the furtherance of this section.

(g) To contract with the Mississippi Department of Corrections and any other state agency to receive funding.

(h) To promote gainful employment and education for those participating in any of the Circuit Court Community Corrections Program services or programs.

(i) To provide transportation, if financially feasible, for participants to and from any job site within the county, and in doing so, a commission and its members and a Circuit Court Community Corrections Program, an executive director or employees, and agents, shall be exempt from all civil liability for any act or omission occurring during any part of such transportation.

(j) To apply for, receive, and administer any financial grants, gifts, or donations of funds from the United States government or any federal agency, from the State of Mississippi or any state agency, any participating county or any county agency, from any private or quasi-governmental foundation, corporation, partnership, firm or agency, and from any individual or group of individuals.

(k) To refuse to have any person participate in any of the Circuit Court Community Corrections Program services and programs when it is contrary to the public interest, is not in the interest of public safety, is a clear and present danger to either the public at large or to another participant, is a clear and present danger to the executive director, employees and agents of a Circuit Court Community Corrections Program, when, as a previous participant, the person undermined, caused disruption to, or interfered with the intent of this section or any Circuit Court Community Corrections Program services and programs, or where a former participant has previ-

ously failed to abide by a Circuit Court Community Corrections Program rules and procedures.

(*l*) To exercise incidental powers and authority to do any and all things necessary to carry out the intent and purposes of this section.

(6) As used in this section the following words shall have the following meanings:

(a) "Eligible person" means one who is not currently charged with, or in the past was not convicted of a crime of violence, including murder, aggravated assault, rape, sexual battery, armed robbery, robbery, manslaughter, burglary of a dwelling, offense pertaining to the sale, barter, or transfer, manufacture, or distribution of a controlled substance pursuant to Section 41-29-139(a)(1), except less than one (1) ounce of marijuana, or have been charged with the possession of one (1) kilogram or more of marijuana, or who has previously demonstrated a pattern of violent behavior. In reaching a determination, as to the latter, the judicial officer with jurisdiction may consider prior convictions, juvenile or youthful offender adjudications, other criminal charges, and the behavior of the offender during incarceration. However, if a person is ineligible based solely upon a previous conviction, that person may be allowed to become a participant with the approval of the district attorney. Otherwise, an eligible person is as follows:

(i) Any person whose criminal sentence has been suspended, in whole or in part, and who is placed under terms of probation by a judicial officer.

(ii) Any person who, having been adjudicated for a criminal offense, would be sentenced to incarceration in jail or in the custody of the Mississippi Department of Corrections.

(iii) Any person who would otherwise be incarcerated in the jail of a participating county for violation of any previous civil or criminal court order, or for any failure to pay child support, or for civil or criminal contempt of court, or for any other civil offense.

(b) "Judicial officer" means any circuit, chancery or county court judge in a participating county, or any duly appointed referee or special master in a participating county, or any other circuit judge from any other county of this state; provided, however, that the Executive Director of a Circuit Court Community Corrections Program shall approve the participation of all persons directed to a Circuit Court Community Corrections Program from a circuit, chancery or county court judge of a nonparticipating county.

(c) "Participant" means a person who is under an order from a judicial officer to participate in the services and programs provided by a Circuit Court Community Corrections Program.

(d) "Participating county" means any county in the Sixth, Seventh, Eleventh, Twelfth, Fourteenth, Fifteenth or Nineteenth Circuit Court District.

(7) Any judicial officer may order that any eligible person whose criminal sentence has been suspended, in whole or in part, upon certain conditions and who is placed under terms of probation, shall have the suspension supervised by the Circuit Court Community Corrections Program under any conditions

ordered by the judicial officer, and in accord with all of the Circuit Court Community Corrections Program rules and procedures. These conditions shall include, but are not limited to, the participant, during the term of the suspended sentence, reporting to the Circuit Court Community Corrections Program on a periodic basis; abiding by all of the Circuit Court Community Corrections Program rules and procedures; submitting to, paying for and passing random drug and alcohol tests as directed by the Circuit Court Community Corrections Program; and to offset the costs of such a program by the participant periodically paying to the Circuit Court Community Corrections Program a reasonable supervision fee set by the commission. Failure to abide by any conditions may result in the participant's probation being revoked and the sentence of incarceration being reinstated.

(8)(a) In lieu of incarceration, any judicial officer may order that any eligible person who, having been adjudicated for a criminal offense, probation violation, or violation of a suspended sentence, and who would otherwise be sentenced to incarceration, or any eligible person who would otherwise be incarcerated for violation of any previous civil or criminal court order, or for any failure to pay child support, or for failure to pay court ordered restitution, or for civil or criminal contempt of court, or for any other criminal or civil offense, be placed in a Circuit Court Community Corrections Program residential rehabilitation and work release center for the purpose of obtaining and working at gainful employment to enable the paying of fines, court costs, child support payments, family support payments, or any other court-ordered monies, or for any other purposes the judicial officer may deem conducive to rehabilitation or otherwise appropriate, for the time or intervals of time and under the terms and conditions as the judicial officer may order and in accord with all Circuit Court Community Corrections Program rules and procedures. The terms and conditions shall include, but are not limited to, the following:

(i) The participant, during his or her participation in the residential program, abiding by all Circuit Court Community Corrections Program rules and procedures;

(ii) The participant submitting to, paying for, and passing random drug and alcohol tests as directed by the Circuit Court Community Corrections Program; and

(iii) The participant offsetting the costs of such program by paying a sum equal to forty percent (40%) of his or her gross earnings earned while participating in the residential program and, if possible, establishing a payroll deduction for the payment of any sums due pursuant to this section, or establish that the employer pay the participant's wages directly to the Circuit Court Community Corrections Program from which the sums can be taken before remitting the remainder to the participant.

(b) The judicial officer may also require the participant in the program to perform community service hours for nonprofit entities, civic organizations, or governmental agencies as directed and supervised by a Circuit Court Community Corrections Program. Failure to abide by any conditions

may result in the participant's arrest and the remainder of the sentence of incarceration being served.

(c) Any jail credit shall be calculated in the customary manner and deducted from the time ordered for participation in the residential program, unless otherwise ordered by the judicial officer. Any part of a day spent within the residential center under the order of the judicial officer shall be counted as a full day toward the serving of the sentence unless otherwise provided by the judicial officer. However, in no event shall the number of days in the program exceed the number of days in the original sentence. If any participant in this residential program willfully fails to report to the program as ordered, or who willfully fails to return to the program from a job or a temporary pass, then such failure and conduct shall be considered the same as an escape from a work release or restitution center.

(9)(a) The commission, if it is financially feasible, shall provide support services at the request of the judicial officer responsible for administering the juvenile and adult drug courts of a participating county, deferred prosecution and pretrial diversion programs as authorized by Sections 99-15-101 through 99-15-127. The services may include, but are not limited to, providing drug and alcohol evaluation, assessments, treatment, case management, personnel, drug and alcohol testing, electronic monitoring, alcohol monitoring, supervision of those participating in the program.

(b) The commission may charge those participating in these support services reasonable fees as established by the commission and commensurate with the service or program provided.

(10)(a) Any and all fees collected from any participant, whether by payroll deduction or otherwise, shall be paid over to and collected by a Circuit Court Community Corrections Program and deposited into its accounts for the purposes set out in this section. The sums shall be expended only for implementation of this section, and shall include, but not be limited to, paying salaries and other expenses involved in the execution of this section; supervision of participants; housing and transportation of participants; matching any federal, state, foundation and personal financial grants which may be available in relation to the purpose of this section; investigation and screening of participants subject to this section; and any other purpose reasonably related to carrying out or in furtherance of the intent of this section.

(b) Where it is determined by the executive director that payment of the fees and sums mandated by operation of this section imposes a definite and substantial financial hardship on the participant, or his or her dependents, the collection and payment of the fees or sums may be deferred or waived, in whole or in part. However, in making that determination, the executive director or the judicial officer shall consider that the purpose of this section is not only to promote the rehabilitation of offenders, but insofar as possible, to make the implementation of this section self-supporting. Nothing in this section shall allow a Circuit Court Community Corrections Program or its executive director to waive any court ordered restitution, recoupment or court costs.

(c) A Circuit Court Community Corrections Program shall maintain a complete and accurate record of all sums collected and expended and there shall be an audit of the same by an appropriate authority on an annual basis; however, the initial audit shall occur before July 1, 2012.

(11) A commission and its members and a Circuit Court Community Corrections Program, its executive director, employees and agents shall be entitled to the statutory privileges and immunities otherwise applicable to duties performed within the scope of their authority under this section.

(12) Upon the voluntary dissolution of a Circuit Court Community Corrections Program or upon its termination by law or rule of a judicial officer, all of its assets, other than those assets held for the benefit of some other person or entity, whether real or personal, tangible or intangible, shall become the property of the participating counties on a pro rata basis.

(13) Should a commission elect to establish a reentry residential and/or nonresidential rehabilitation and work-release program for inmates being released from the custody of the Mississippi Department of Corrections pursuant to subsection (4) of this section, the following shall apply:

(a) The commission and the Mississippi Department of Corrections must agree to establish the program

(b) The commission and the Mississippi Department of Corrections must agree to the rules, regulations, policies and guidelines pertaining to the operation of the program;

(c) The criteria for those individuals who are selected for participation in the program authorized by this section shall be established by the unanimous agreement of the circuit judge, the district attorney, the commission and the Commissioner of the Mississippi Department of Corrections; and

(d) The participants in the program must have been residents of the appropriate circuit court district at the time of his or her incarceration in the Mississippi Department of Corrections, or this requirement must be waived by the commission prior to entry of a participant into the program.

(14)(a) This section shall not interfere with or prevent the exercise by any judicial officer of Mississippi of its power to punish for contempt.

(b) This section shall not interfere with or change in any manner the operation of any adult or juvenile drug or DUI court, or a pretrial diversion program operated by a district attorney's office.

(c) The procedures described in this section shall be cumulative and in addition to all other bail and release procedures provided by law.

(15) The provisions of this section are severable. If any part of this section is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

(16) Upon its passage and approval by the Governor, or upon it otherwise becoming a law, this section shall be retroactive to the extent allowed by law.

(17) This section shall stand repealed from and after July 1, 2013.

SOURCES: Laws, 2010, ch. 544, § 1, eff from and after passage (approved Apr. 28, 2010.)

CHAPTER 9

County Courts

§ 9-9-1. Continuation and establishment in certain counties.

(1) There shall be an inferior court to be known as the county court in and for each of the following counties:

(a) Each county of the state wherein a county court is in existence on July 1, 1985;

(b) From and after January 1, 1987, each county that has a population exceeding fifty thousand (50,000) inhabitants as shown by the latest federal decennial census; and

(c) The board of supervisors of any county having a population exceeding thirty-nine thousand (39,000) inhabitants as shown by the latest federal decennial census in which Highways 589 and 98 intersect shall have the option to establish a county court under the provisions of this section.

(2)(a) A county judge for a county that is required to establish a county court under subsection (1)(b) of this section shall be elected by the qualified electors of the county for the same term and in the same manner as provided for the election of circuit court judges at an election held at the same time as the next regular election of circuit court judges first occurring after the date upon which it can be determined that a county court is required under the provisions of subsection (1)(b) of this section to be established in such county.

(b) A county judge for a county electing to establish a county court under subsection (1)(c) of this section shall be elected by the qualified electors of the county in the same manner as provided for the election of circuit court judges at an election held at the November general election first occurring after the date when the board of supervisors spreads upon its minutes a resolution creating the county court. The term of the county court judge so elected shall begin on the first day of January following the November election, and shall end at the same time as for county court judges generally. Thereafter, the county court judge shall be elected and serve for a term as provided for county court judges generally.

(3) The provisions of this section shall not be construed so as to require that a county court be established in any county in which the board of supervisors has agreed and contracted with the board of supervisors of any

other county or counties to support and maintain one (1) county court for such counties as provided in Section 9-9-3.

SOURCES: Codes, 1930, § 693; 1942 § 1604; Laws, 1926, ch. 131; Laws, 1934, ch. 236; Laws, 1936, ch. 247; Laws, 1948, ch. 236; Laws, 1950, ch. 321; Laws, 1962, ch. 300; Laws, 1964, ch. 322; Laws, 1966, ch. 344, § 1; Laws, 1968, ch. 311, § 1; Laws, 1970, ch. 335, § 1; Laws, 1974, ch. 477, § 1; Laws, 1979, ch. 457, § 1; Laws, 1985, ch. 502, § 60; Laws, 2002, ch. 356, § 3; Laws, 2007, ch. 318, § 1; brought forward without change, Laws, 2010, ch. 442, § 2, eff June 21, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the bringing forward without change of this section.)

Editor's Note — The constitutional amendment to Article 6, § 153 proposed by Laws, 2002, ch. 713, was defeated by the voters on November 5, 2002.

On June 25, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendments to this section by Laws of 2007, ch. 318, § 1.

By letter dated June 21, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the bringing forward without change of this section by Laws of 2010, ch. 442.

Amendment Notes — The 2007 amendment added (1)(c); added (2)(b) and designated former (2) as present (2)(a); substituted "subsection (1)(b)" for "paragraph (1)(b)" both times it appears in (2)(a); and made minor stylistic changes throughout.

The 2010 amendment brought this section forward without change.

§ 9-9-9. County judge; general restriction on practice of law.

JUDICIAL DECISIONS

1. Discipline.

Where a judge breached the peace during the repossession of an automobile jointly owned by the judge's wife and mother-in-law, his conduct violated Miss. Code Jud. Conduct Canon 1; the Supreme Court of Mississippi suspended him for 180 days without compensation. The judge had a pattern of misconduct, as he had been disciplined in the past for practicing law as a judge in violation of Miss. Code Ann. §§ 9-1-25, 9-9-9. Miss. Comm'n on Judicial Performance v. Osborne, 977 So. 2d 314 (Miss. 2008).

Where a county judge had not willfully abused the privilege of filing new complaints while in office, the court adopted the commission's recommendation that the judge be publicly reprimanded and that he be reinstated after his temporary suspension. Miss. Comm'n on Judicial Performance v. Osborne, 876 So. 2d 324 (Miss. 2004).

ATTORNEY GENERAL OPINIONS

Serving as a family master does not amount to the practice of law as contemplated by this section and Section 9-9-11. Griffith, Dec. 6, 2002, A.G. Op. #02-0689.

A county court judge may be appointed as a family master and receive additional compensation from the county under Section 9-5-255(4) beyond the compensation that is received for being a county court judge. Griffith, Dec. 6, 2002, A.G. Op. #02-0689.

§ 9-9-11. County judge; compensation and further restrictions.

[Effective until the later of the date Laws of 2012, ch. 329, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or January 1, 2013, this section will read:]

(1) Except as otherwise provided in subsections (2), (3) and (4), the county court judge shall receive an annual salary payable monthly out of the county treasury in an amount not to exceed One Thousand Dollars ($1,000.00) less than the salary which is now or shall hereafter be provided for circuit and chancery judges of this state, in the discretion of the board of supervisors of said county; provided, however, that the salary of such judge shall not be reduced during his term of office. Provided further, that the office of county court judge in any county receiving an annual salary of Thirty-six Thousand Dollars ($36,000.00) or more shall be a full-time position, and the holder thereof shall not otherwise engage in the practice of law.

(2) In the event of the establishment of a county court by agreement between two (2) or more counties as provided in Section 9-9-3, the county judge of the court so established shall be paid a salary equal to one and one-half (1-½) times that salary that he would be paid if he were the judge of the smallest of such two (2) or more counties, such salary to be paid in monthly installments as provided by law; provided that such salary shall not exceed One Thousand Dollars ($1,000.00) less than the salary of the circuit and chancery judges of this state.

(3) The county court judge shall receive an annual salary payable monthly out of the county treasury as follows:

(a) In any county having a population of seventy thousand (70,000) or more according to the 1980 federal census, the county judge shall receive an annual salary of One Thousand Dollars ($1,000.00) less than that paid to a circuit court judge. The office of county judge shall be a full-time position, and the holder thereof shall not otherwise engage in the practice of law.

(b) In any county having a population of sixty thousand (60,000) or more but less than seventy thousand (70,000) according to the 1980 federal census, the county judge shall receive an annual salary of Forty Thousand Dollars ($40,000.00). The office of county judge shall be a full-time position, and the holder thereof shall not otherwise engage in the practice of law. The county judge shall not be eligible for any additional salary except as may be authorized in subsection (4).

(c) In any county having a population of twenty-seven thousand (27,000) or more but less than sixty thousand (60,000) according to the 1980 federal census, the county judge shall receive an annual salary of not less than Twelve Thousand Dollars ($12,000.00) but not more than Forty Thousand Dollars ($40,000.00), in the discretion of the board of supervisors of said county. The county judge shall not be eligible for any additional salary except as may be authorized in subsection (4). In the event that the

board of supervisors of said county elects to pay such county judge an annual salary of Thirty Thousand Dollars ($30,000.00) or more, the office of county judge shall be a full-time position, and the holder thereof shall not otherwise engage in the practice of law.

(d) In any county having a population of less than twenty-seven thousand (27,000) according to the 1980 federal census, the county judge shall receive an annual salary of not less than Four Thousand Two Hundred Dollars ($4,200.00) and not more than Eight Thousand Five Hundred Dollars ($8,500.00), in the discretion of the board of supervisors of said county. The county judge shall not be eligible for any additional salary except as may be authorized in subsection (4).

(4) The county judge of any county described in this subsection shall be paid the compensation, and he shall be subject to any restrictions, set forth in the following paragraphs:

(a) The county judge of any such Class 1 county with population according to the latest federal decennial census of forty-five thousand (45,000) or more and lying wholly within a levee district and having two (2) judicial districts shall, in the discretion of the board of supervisors of such county, receive an annual salary not exceeding Forty Thousand Dollars ($40,000.00), or a sum which is One Thousand Dollars ($1,000.00) less than the salary which is now or shall hereafter be provided for circuit and chancery judges of the state, whichever is greater.

(b) The county judge of any Class 1 county having an area in excess of nine hundred twenty-five (925) square miles shall receive an annual salary of not less than Thirty Thousand Dollars ($30,000.00) but, in the discretion of the board of supervisors of such county, such salary may be not more than Five Hundred Dollars ($500.00) less than the annual salary of a circuit judge, payable monthly out of the county treasury, and the county judge shall not practice law.

(c) The office of county judge in any such Class 1 county with a population according to the 1970 federal decennial census of greater than thirty-nine thousand (39,000), and where U.S. Highway 61 and Mississippi Highway 6 intersect, shall receive an annual salary to be paid in monthly installments of not less than an amount equal to ninety percent (90%) of the annual salary which is now or shall hereafter be provided for circuit and chancery judges of the state, as follows: The salary of the county judge shall be increased by ten percent (10%) annually above the base salary of the preceding year until such time as the judge's salary is equal to the amount that is provided by this subsection. The office of county judge shall be a full-time position and the holder thereof shall not otherwise engage in the practice of law.

(d) In any Class 1 county bordering on the Mississippi River and which has situated therein a national military park and national military cemetery, the office of county judge shall be a full-time position and the holder thereof shall not otherwise engage in the practice of law. The salary for the county judge in said county shall be fixed at a sum which is One

Thousand Dollars ($1,000.00) less than the salary which is now or shall hereafter be provided for circuit and chancery judges of this state.

(e) The county judge in any county having a population of at least forty-two thousand one hundred eleven (42,111), according to the 1970 census, and where U.S. Highway 49E and U.S. Highway 82 intersect, shall receive an annual salary to be paid in monthly installments of not less than Thirty Thousand Dollars ($30,000.00) but not more than Two Thousand Five Hundred Dollars ($2,500.00) less than the annual salary of the circuit judge, in the discretion of the board of supervisors of said county.

(f) The county judge in any Class 1 county bordering on the Mississippi River and having an area of less than four hundred fifty (450) square miles wherein U.S. Highways 84 and 61 intersect shall receive an annual salary of Four Thousand Dollars ($4,000.00) less than the annual salary of a circuit judge, and such county judge shall not practice law in any manner. The county judge in such county shall not be eligible to receive any additional salary authorized by this section or from any other source other than that set out and authorized by this paragraph.

(g) The county judge of any Class 1 county bordering on the Mississippi River on the west and the State of Tennessee on the north, and traversed north to south by Interstate Highway 55, shall receive an annual salary of ninety percent (90%) of the salary which is now or shall hereafter be provided for chancery and circuit judges of this state, but in any event not less than Sixty Thousand Two Hundred Dollars ($60,200.00).

(h) The county judge of any Class 1 county with a population of greater than sixty-nine thousand (69,000) according to the 1980 federal decennial census, and wherein U.S. Highway 80 and Mississippi Highway 43 intersect, shall receive an annual salary in an amount not greater than the sum of Five Hundred Dollars ($500.00) less than the salary which is now or shall hereafter be provided for circuit and chancery judges of this state, in the discretion of the board of supervisors of said county.

(i) The county judge of any county having a population in excess of sixty-six thousand (66,000) according to the 1980 federal decennial census, wherein is located a state-supported university and in which U.S. Highways 49 and 11 intersect, shall receive an annual salary of One Thousand Dollars ($1,000.00) less than that paid to a circuit court judge. The office of such county judge shall be a full-time position, and the holder thereof shall not otherwise engage in the practice of law.

(j) The county judge of any county having two (2) judicial districts, having a population in excess of sixty-one thousand nine hundred (61,900) according to the 1980 federal decennial census, in which U.S. Interstate Highway 59 intersects with U.S. Highway 84, shall receive an annual salary of One Thousand Dollars ($1,000.00) less than the salary which is now or hereafter authorized to be paid circuit and chancery court judges of this state. The office of such county judge shall be a full-time position, and the holder thereof shall not otherwise engage in the practice of law.

(k) The office of county judge of any Class I county wherein U.S. Highway 51 and U.S. Highway 98 intersect shall be a full-time position and the holder thereof shall not otherwise engage in the practice of law. The annual salary for the office of county judge in said county may be fixed, in the discretion of the board of supervisors of said county, at a sum not to exceed Two Thousand Dollars ($2,000.00) less than the salary which is now or shall hereafter be provided for circuit and chancery judges of this state.

(*l*) The county judge of any county having a population of more than forty-one thousand six hundred (41,600) but less than forty-one thousand six hundred fifty (41,650) according to the 1980 federal census, and wherein U.S. Highway 49 intersects with Mississippi Highway 22, shall receive an annual salary payable monthly out of the county treasury of One Thousand Dollars ($1,000.00) less than the salary provided now or hereafter for circuit and chancery judges of this state.

(m) The county judge of any county having a population of more than fifty-seven thousand (57,000) but less than fifty-seven thousand one hundred (57,100) according to the 1980 federal census, wherein U.S. Highway 45 intersects with Mississippi Highway 6, shall receive an annual salary in an amount established by the board of supervisors, but in no event to exceed the salary provided now or hereafter for circuit and chancery judges of this state.

(n) The county judge of any county having a population of more than fifty-seven thousand three hundred (57,300) according to the 1980 federal decennial census, wherein is located a state-supported university and wherein U.S. Highways 82 and 45 intersect, shall receive an annual salary in an amount established by the board of supervisors, but in no event to exceed the salary provided now or hereafter for circuit and chancery judges of this state.

(5) The salary of a county court judge or justice court judge shall not be reduced during his term of office as a result of a population decrease based upon the 1990 federal decennial census.

(6) The salary of a sheriff shall not be reduced during his term of office as a result of a population decrease based upon the 1990 federal decennial census.

(7) Notwithstanding any provision of this section to the contrary, the board of supervisors of any county, in its discretion, may pay its county court judge an annual salary of One Thousand Dollars ($1,000.00) less than that paid to a circuit court judge. The office of county judge shall be a full-time position, and the holder thereof shall not otherwise engage in the practice of law.

[Effective from and after the later of the date Laws of 2012, ch. 329, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or January 1, 2013, this section will read:]

(1) Except as otherwise provided in subsections (2), (3) and (4), the county court judge shall receive an annual salary payable monthly out of the

county treasury in an amount not to exceed One Thousand Dollars ($1,000.00) less than the salary which is now or shall hereafter be provided for circuit and chancery judges of this state, in the discretion of the board of supervisors of said county; provided, however, that the salary of such judge shall not be reduced during his term of office. Provided further, that the office of county court judge in any county receiving an annual salary of Thirty-six Thousand Dollars ($36,000.00) or more shall be a full-time position, and the holder thereof shall not otherwise engage in the practice of law.

(2) If a county court is established by agreement between two (2) or more counties as provided in Section 9-9-3, the county judge of the court so established shall be paid a salary equal to one and one-half (1-½) times that salary that he would be paid if he were the judge of the smallest of such two (2) or more counties, such salary to be paid in monthly installments as provided by law; provided that such salary shall not exceed One Thousand Dollars ($1,000.00) less than the salary of the circuit and chancery judges of this state.

(3) The county court judge shall receive an annual salary payable monthly out of the county treasury as follows:

(a) In any county having a population of seventy thousand (70,000) or more according to the 1980 federal census, the county judge shall receive an annual salary of One Thousand Dollars ($1,000.00) less than that paid to a circuit court judge. The office of county judge shall be a full-time position, and the holder thereof shall not otherwise engage in the practice of law.

(b) In any county having a population of sixty thousand (60,000) or more but less than seventy thousand (70,000) according to the 1980 federal census, the county judge shall receive an annual salary of Forty Thousand Dollars ($40,000.00). The office of county judge shall be a full-time position, and the holder thereof shall not otherwise engage in the practice of law. The county judge shall not be eligible for any additional salary except as may be authorized in subsection (4).

(c) In any county having a population of twenty-seven thousand (27,000) or more but less than sixty thousand (60,000) according to the 1980 federal census, the county judge shall receive an annual salary of not less than Twelve Thousand Dollars ($12,000.00) but not more than Forty Thousand Dollars ($40,000.00), in the discretion of the board of supervisors of said county. The county judge shall not be eligible for any additional salary except as may be authorized in subsection (4). In the event that the board of supervisors of said county elects to pay such county judge an annual salary of Thirty Thousand Dollars ($30,000.00) or more, the office of county judge shall be a full-time position, and the holder thereof shall not otherwise engage in the practice of law.

(d) In any county having a population of less than twenty-seven thousand (27,000) according to the 1980 federal census, the county judge shall receive an annual salary of not less than Four Thousand Two Hundred Dollars ($4,200.00) and not more than Eight Thousand Five

Hundred Dollars ($8,500.00), in the discretion of the board of supervisors of said county. The county judge shall not be eligible for any additional salary except as may be authorized in subsection (4).

(4) The county judge of any county described in this subsection shall be paid the compensation, and he shall be subject to any restrictions set forth in the following paragraphs:

(a) The county judge of any such Class 1 county with a population according to the latest federal decennial census of forty-five thousand (45,000) or more and lying wholly within a levee district and having two (2) judicial districts shall, in the discretion of the board of supervisors of such county, receive an annual salary not exceeding Forty Thousand Dollars ($40,000.00), or a sum which is One Thousand Dollars ($1,000.00) less than the salary which is now or shall hereafter be provided for circuit and chancery judges of the state, whichever is greater.

(b) The county judge of any Class 1 county having an area in excess of nine hundred twenty-five (925) square miles shall receive an annual salary of not less than Thirty Thousand Dollars ($30,000.00) but, in the discretion of the board of supervisors of such county, such salary may be not more than Five Hundred Dollars ($500.00) less than the annual salary of a circuit judge, payable monthly out of the county treasury, and the county judge shall not practice law.

(c) The office of county judge in any such Class 1 county with a population according to the 1970 federal decennial census of greater than thirty-nine thousand (39,000), and where U.S. Highway 61 and Mississippi Highway 6 intersect, shall receive an annual salary to be paid in monthly installments of not less than an amount equal to ninety percent (90%) of the annual salary which is now or shall hereafter be provided for circuit and chancery judges of the state, as follows: The salary of the county judge shall be increased by ten percent (10%) annually above the base salary of the preceding year until such time as the judge's salary is equal to the amount that is provided by this subsection. The office of county judge shall be a full-time position and the holder thereof shall not otherwise engage in the practice of law.

(d) In any Class 1 county bordering on the Mississippi River and which has situated therein a national military park and national military cemetery, the office of county judge shall be a full-time position and the holder thereof shall not otherwise engage in the practice of law. The salary for the county judge in said county shall be fixed at a sum which is One Thousand Dollars ($1,000.00) less than the salary which is now or shall hereafter be provided for circuit and chancery judges of this state.

(e) The county judge in any county having a population of at least forty-two thousand one hundred eleven (42,111), according to the 1970 census, and where U.S. Highway 49E and U.S. Highway 82 intersect, shall receive an annual salary to be paid in monthly installments of not less than Thirty Thousand Dollars ($30,000.00) but not more than Two Thousand Five Hundred Dollars ($2,500.00) less than the annual salary of

the circuit judge, in the discretion of the board of supervisors of said county.

(f) The county judge in any Class 1 county bordering on the Mississippi River and having an area of less than four hundred fifty (450) square miles wherein U.S. Highways 84 and 61 intersect shall receive an annual salary of Four Thousand Dollars ($4,000.00) less than the annual salary of a circuit judge, and such county judge shall not practice law in any manner. The county judge in such county shall not be eligible to receive any additional salary authorized by this section or from any other source other than that set out and authorized by this paragraph.

(g) The county judge of any Class 1 county bordering on the Mississippi River on the west and the State of Tennessee on the north, and traversed north to south by Interstate Highway 55, shall receive an annual salary of ninety percent (90%) of the salary which is now or shall hereafter be provided for chancery and circuit judges of this state, but in any event not less than Sixty Thousand Two Hundred Dollars ($60,200.00).

(h) The county judge of any Class 1 county with a population of greater than sixty-nine thousand (69,000) according to the 1980 federal decennial census, and wherein U.S. Highway 80 and Mississippi Highway 43 intersect, shall receive an annual salary in an amount not greater than the sum of Five Hundred Dollars ($500.00) less than the salary which is now or shall hereafter be provided for circuit and chancery judges of this state, in the discretion of the board of supervisors of said county.

(i) The county judge of any county having a population in excess of sixty-six thousand (66,000) according to the 1980 federal decennial census, wherein is located a state-supported university and in which U.S. Highways 49 and 11 intersect, shall receive an annual salary of One Thousand Dollars ($1,000.00) less than that paid to a circuit court judge. The office of such county judge shall be a full-time position, and the holder thereof shall not otherwise engage in the practice of law.

(j) The county judge of any county having two (2) judicial districts, having a population in excess of sixty-one thousand nine hundred (61,900) according to the 1980 federal decennial census, in which U.S. Interstate Highway 59 intersects with U.S. Highway 84, shall receive an annual salary of One Thousand Dollars ($1,000.00) less than the salary which is now or hereafter authorized to be paid circuit and chancery court judges of this state. The office of such county judge shall be a full-time position, and the holder thereof shall not otherwise engage in the practice of law.

(k) The office of county judge of any Class I county wherein U.S. Highway 51 and U.S. Highway 98 intersect shall be a full-time position and the holder thereof shall not otherwise engage in the practice of law. The annual salary for the office of county judge in said county may be fixed, in the discretion of the board of supervisors of said county, at a sum not to exceed Two Thousand Dollars ($2,000.00) less than the salary which is now or shall hereafter be provided for circuit and chancery judges of this state.

(*l*) The county judge of any county having a population of more than forty-one thousand six hundred (41,600) but less than forty-one thousand six hundred fifty (41,650) according to the 1980 federal census, and wherein U.S. Highway 49 intersects with Mississippi Highway 22, shall receive an annual salary payable monthly out of the county treasury of One Thousand Dollars ($1,000.00) less than the salary provided now or hereafter for circuit and chancery judges of this state.

(m) The county judge of any county having a population of more than fifty-seven thousand (57,000) but less than fifty-seven thousand one hundred (57,100) according to the 1980 federal census, wherein U.S. Highway 45 intersects with Mississippi Highway 6, shall receive an annual salary in an amount established by the board of supervisors, but in no event to exceed the salary provided now or hereafter for circuit and chancery judges of this state.

(n) The county judge of any county having a population of more than fifty-seven thousand three hundred (57,300) according to the 1980 federal decennial census, wherein is located a state-supported university and wherein U.S. Highways 82 and 45 intersect, shall receive an annual salary in an amount established by the board of supervisors, but in no event to exceed the salary provided now or hereafter for circuit and chancery judges of this state.

(5) The salary of a county court judge or justice court judge shall not be reduced during his term of office as a result of a population decrease based upon the 1990 federal decennial census.

(6) The salary of a sheriff shall not be reduced during his term of office as a result of a population decrease based upon the 1990 federal decennial census.

(7) Notwithstanding any provision of this section to the contrary, the board of supervisors of any county, in its discretion, may pay its county court judge an annual salary of One Thousand Dollars ($1,000.00) less than that paid to a circuit court judge. The office of county judge shall be a full-time position, and the holder thereof shall not otherwise engage in the practice of law.

(8)(a) There shall be transferred to the county for each county court judge, payment to be made in monthly installments from the Judicial System Operation Fund created under Section 9-21-45, an annual salary supplement of:

(i) From and after January 1, 2013, through December 31, 2013, the sum of Seven Thousand Nine Hundred Fifty-seven Dollars and Fifty Cents ($7,957.50), plus any applicable fringe benefits resulting from this amount;

(ii) From and after January 1, 2014, through December 31, 2014, the sum of Fifteen Thousand Nine Hundred Fifteen Dollars ($15,915.00), plus any applicable fringe benefits resulting from this amount;

(iii) From and after January 1, 2015, through December 31, 2015, the sum of Twenty-three Thousand Eight Hundred Seventy-two Dollars

and Fifty Cents ($23,872.50), plus any applicable fringe benefits resulting from this amount; and

(iv) From and after January 1, 2016, through December 31, 2019, the sum of Thirty-one Thousand Eight Hundred Thirty Dollars ($31,830.00), plus any applicable fringe benefits resulting from this amount.

(b) From and after January 1, 2019, and every four (4) years thereafter, the annual salary in this subsection (8) shall be adjusted according to the level of compensation recommended by the State Personnel Board for county court judges in the board's most recent report on judicial salaries, as required under Section 25-9-115, to the extent that sufficient funds are available.

(c) The total annual salary paid to the county court judge out of the county treasury and out of the Judicial System Operation Fund created under Section 9-21-45 shall not exceed the salary limitation set forth in subsection (7) of this section.

SOURCES: Codes, 1930, §§ 693, 697; 1942, §§ 1604, 1608; Laws, 1926, ch. 131; Laws, 1934, ch. 236; Laws, 1936, chs. 247, 254; Laws, 1946, ch. 370; Laws, 1948, ch. 236; Laws, 1950, chs. 251, 321; Laws, 1952, ch. 238; Laws, 1954, ch. 230; Laws, 1954 Ex Sess ch. 15; Laws, 1955 Ex. ch. 39, § 1; Laws, 1956, ch. 231, §§ 1, 2; Laws, 1960, ch. 234; Laws, 1962, ch. 300; Laws, 1964, ch. 322; Laws, 1966, chs. 344, § 1, 345, § 1; Laws, 1968, ch. 311, §§ 1, 2; Laws, 1970, chs. 335, § 1, 402, § 4; Laws, 1971, ch. 495, § 1; Laws, 1973, ch. 486, § 1; Laws, 1975, ch. 461; Laws, 1978, ch. 504, § 1; Laws, 1979, ch. 457, § 2; Laws, 1980, ch. 558; Laws, 1982, ch. 476, § 1; Laws, 1985, ch. 526; Laws, 1986, ch. 463; Laws, 1988, ch. 508; Laws, 1989, ch. 323, § 1; Laws, 1991, ch. 559 § 1; Laws, 1993, ch. 550, § 1; Laws, 2004, ch. 334, § 1; Laws, 2006, ch. 376, § 1; Laws, 2012, ch. 329, § 8, eff the date the United States Attorney General interposes no objection under Section 5 of the Voting Rights Act of 1965, or January 1, 2013, whichever occurs later.

Editor's Note — By letter dated August 19, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2004, ch. 334, § 1.

Laws of 2006, ch. 376, § 3 provides:

"SECTION 3. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or October 1, 2006, whichever occurs later."

On June 28, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 376, § 1.

Laws of 2012, ch. 329, §§ 10 and 11 provide:

"SECTION 10. The Attorney General of the State of Mississippi shall submit Sections 1 and 8 of this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 11. Sections 1 and 8 of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or January 1, 2013, whichever occurs later; and the remainder of this act shall take effect and be in force from and after July 1, 2012."

Amendment Notes — The 2004 amendment rewrote (7).

The 2006 amendment substituted "subsections (2), (3) and (4)" for "subsections (2) and (3)" in (1); substituted "payable monthly out of the county treasury of One Thousand Dollars ($1,000.00) less than" for "in an amount established by the board of supervisors but in no event to exceed" preceding "the salary provided" near the end of (4)(*l*); and made a minor stylistic change.

The 2012 amendment substituted "If a county court is established by agreement" for "In the event of the establishment of a county court by agreement" in (2); and added (8).

ATTORNEY GENERAL OPINIONS

Serving as a family master does not amount to the practice of law as contemplated by Section 9-9-9 and this section. Griffith, Dec. 6, 2002, A.G. Op. #02-0689.

A county court judge may be appointed as a family master and receive additional compensation from the county under Section 9-5-255(4) beyond the compensation that is received for being a county court judge. Griffith, Dec. 6, 2002, A.G. Op. #02-0689.

§ 9-9-18. Additional county court judge for Rankin County.

SOURCES: Laws, 2002, ch. 495, § 1, eff July 22, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's Note — The United States Attorney General, by letter dated July 22, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2002, ch. 495, § 1.

§ 9-9-18.1. Additional county court judge for Madison County.

SOURCES: Laws, 2002, ch. 495, § 2, eff July 22, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's Note — The United States Attorney General, by letter dated July 22, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2002, ch. 495, § 2.

§ 9-9-18.2. County court judge for Pearl River County.

(1) In order to relieve the crowded condition of the docket in the courts and in the youth court of Pearl River County and particularly to facilitate and make possible the trial and disposition of the large number of causes on the docket and in the youth court, there shall be a county court with one (1) county judge for Pearl River County, provided for and elected as herein set out.

(2) The county court of Pearl River County may, in the discretion of the county judge, be divided into civil, equity, criminal and youth court divisions as a matter of convenience by the entry of an order upon the minutes of the court.

(3) The initial holder of the judgeship created by this section shall be elected in the regular election of November 2010; candidates therefor shall qualify to run not later than sixty (60) days before that election. The person

elected shall begin the term of office in January of 2011 at the same time as county judges generally, and there shall be no vacancy of the office before that time. Thereafter, the judge shall otherwise be elected, and any vacancy in office filled, as provided for county judges generally.

(4) The Board of Supervisors of Pearl River County may, in its discretion, set aside, appropriate and expend monies from the general fund to be used in the payment of salaries of the judge, clerks, reporters, officers and employees of the youth court division of the county court, including the related facilities of the youth court division of the county court, and such funds shall be expended for no other purposes. The county shall not be reimbursed for the amount of any such levy provided for by this section under the terms of the Homestead Exemption Law.

SOURCES: Laws, 2010, ch. 442, § 1, eff June 21, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's Note — By letter dated June 21, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Acts of 1965, as amended and extended, to the addition of this section by Laws of 2010, ch. 442.

Cross References — Provisions of the Homestead Exemption Law, see §§ 27-33-1 et seq.

§ 9-9-18.3. Additional county court judges for Lauderdale County.

(1) In order to relieve the crowded condition of the docket in the county court and in the youth court of Lauderdale County and particularly to facilitate and make possible the trial and disposition of the large number of causes on the docket and in the youth court, there shall be two (2) county judges for Lauderdale County, provided for and elected as herein set out.

(2) For the purposes of nomination and election, the two (2) judgeships shall be separate and distinct, the presently existing judgeship and its succession to be denominated for purposes of appointment, nomination and election only as "Place One" and the judgeship hereby created and its succession for said selfsame purposes and none other to be designated as "Place Two." There shall be no distinction whatsoever in the powers, duties and emoluments of the two (2) offices of county judge, except that the county judge of Lauderdale County who has been for the longest time continuously a county judge of the county shall have the right to assign causes, terms and dockets. Should neither judge of the county court have served longer in office than the other, then that judge of the county court who has been for the longest time a member of The Mississippi Bar shall have the right to assign causes, terms and dockets.

(3) While there shall be no limitation whatsoever upon the powers and duties of the said county judges other than as cast upon them by the Constitution and laws of this state, the county court of Lauderdale County may, in the discretion of the county judge who has been for the longest time

continuously a judge of said court, be divided into civil, equity, criminal and youth court divisions as a matter of convenience by the entry of an order upon the minutes of the court.

(4) The initial holder of the additional judgeship created by this section, or "Place Two," shall be elected in the regular election of November 2006; candidates therefor shall qualify to run not later than forty-five (45) days before that election. The person elected shall begin the term of office in January of 2007 at the same time as county judges generally, and there shall be no vacancy of the office before that time. Thereafter the two (2) judges shall otherwise be elected, and any vacancy in office filled, as provided for county judges generally.

(5) The Board of Supervisors of Lauderdale County may, in its discretion, set aside, appropriate and expend monies from the general fund to be used in the payment of salaries of judges, clerks, reporters, officers and employees of the youth court division of the county court, including the related facilities of the youth court division of the county court, and such funds shall be expended for no other purposes. The county shall not be reimbursed for the amount of any such levy provided for by this section under the terms of the Homestead Exemption Law.

SOURCES: Laws, 2006, ch. 507, § 1, eff June 30, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's Note — On June 30, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 507, § 1.

§ 9-9-18.5. Additional county court judge for DeSoto County.

(1) In order to relieve the crowded condition of the docket in the county court and in the youth court of DeSoto County and particularly to facilitate and make possible the trial and disposition of the large number of causes on the docket and in the youth court, there shall be two (2) county judges for DeSoto County, provided for and elected as herein set out.

(2) For the purposes of nomination and election, the two (2) judgeships shall be separate and distinct, the first existing judgeship and its succession to be denominated for purposes of appointment, nomination and election only as "Place One" and the judgeship hereby created and its succession for said selfsame purposes and none other to be designated as "Place Two." There shall be no distinction whatsoever in the powers, duties and emoluments of the two (2) offices of county judge, except that the county judge of DeSoto County who has been for the longest time continuously a county judge of the county shall have the right to assign causes, terms and dockets. Should neither judge of the county court have served longer in office than the other, then that judge who has been for the longest time a member of The Mississippi Bar shall have the right to assign causes, terms and dockets.

(3) While there shall be no limitation whatsoever upon the powers and duties of the county judges other than as cast upon them by the Constitution and laws of this state, the county court of DeSoto County may, in the discretion of the county judge who has been for the longest time continuously a judge of the court, be divided into civil, equity, criminal and youth court divisions as a matter of convenience by the entry of an order upon the minutes of the court.

(4) The initial holder of the additional judgeship created by this section, or "Place Two," shall be elected in the regular election of November 2008; candidates therefor shall qualify to run not later than forty-five (45) days before that election. The term of office of the person elected shall begin on the first day of January following the November election and shall end at the same time as for county judges generally. The two (2) judges shall otherwise be elected, and any vacancy in office filled, as provided for county judges generally.

(5) The Board of Supervisors of DeSoto County may, in its discretion, set aside, appropriate and expend monies from the general fund to be used in the payment of salaries of judges, clerks, reporters, officers and employees of the youth court division of the county court, including the related facilities of the youth court division of the county court, and such funds shall be expended for no other purposes. The county shall not be reimbursed for the amount of any such levy provided for by this section under the terms of the Homestead Exemption Law.

SOURCES: Laws, 2008, ch. 395, § 1, eff July 16, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's Note — On July 16, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the enactment of this section by Chapter 395, Laws of 2008.

Cross References — Provisions of the Homestead Exemption Law, see §§ 27-33-1 et seq.

§ 9-9-21. Jurisdiction.

(1) The jurisdiction of the county court shall be as follows: It shall have jurisdiction concurrent with the justice court in all matters, civil and criminal of which the justice court has jurisdiction; and it shall have jurisdiction concurrent with the circuit and chancery courts in all matters of law and equity wherein the amount of value of the thing in controversy shall not exceed, exclusive of costs and interest, the sum of Two Hundred Thousand Dollars ($200,000.00), and the jurisdiction of the county court shall not be affected by any setoff, counterclaim or cross-bill in such actions where the amount sought to be recovered in such setoff, counterclaim or cross-bill exceeds Two Hundred Thousand Dollars ($200,000.00). Provided, however, the party filing such setoff, counterclaim or cross-bill which exceeds Two Hundred Thousand Dollars ($200,000.00) shall give notice to the opposite party or

parties as provided in Section 13-3-83, and on motion of all parties filed within twenty (20) days after the filing of such setoff, counterclaim or cross-bill, the county court shall transfer the case to the circuit or chancery court wherein the county court is situated and which would otherwise have jurisdiction. It shall have exclusively the jurisdiction heretofore exercised by the justice court in the following matters and causes: namely, eminent domain, the partition of personal property, and actions of unlawful entry and detainer, provided that the actions of eminent domain and unlawful entry and detainer may be returnable and triable before the judge of said court in vacation.

(2) In the event of the establishment of a county court by an agreement between two (2) or more counties as provided in Section 9-9-3, it shall be lawful for such court sitting in one (1) county to act upon any and all matters of which it has jurisdiction as provided by law arising in the other county under the jurisdiction of said court.

SOURCES: Codes, 1930, § 693; 1942, § 1604; Laws, 1926, ch. 131; Laws, 1934, ch. 236; Laws, 1936, ch. 247; Laws, 1948, ch. 236; Laws, 1950, ch. 321; Laws, 1962, ch. 300; Laws, 1964, ch. 322; Laws, 1966, ch. 344, § 1; Laws, 1968, ch. 311, § 1; Laws, 1970, ch. 335, § 1; Laws, 1974, ch. 477, § 2; Laws, 1984, ch. 348; Laws, 1991, ch. 311, § 1; Laws, 1998, ch. 427, § 1; Laws, 2003, ch. 429, § 1, eff from and after July 1, 2003.

Amendment Notes — The 2003 amendment substituted "Two Hundred Thousand Dollars ($200,000.00)" for "Seventy-five Thousand Dollars ($75,000.00)" throughout (1).

JUDICIAL DECISIONS

1. In general.
2. Jurisdiction in general.
3. Jurisdictional amount.

1. In general.

Pursuant to Miss. Code Ann. § 9-9-21, the buyers were required to give notice to the dealership, and both parties were required to make a motion, within 20 days after the filing of the counterclaim, to transfer the case to the circuit or chancery court of the county in which the county court was located; no such notice was given, and the parties failed to make a motion within 20 days, such that their failure to notify the court could not confer jurisdiction on the county court; since the parties did not follow these mandated procedures and the counterclaim failed to comply with the then jurisdictional prerequisites, the counterclaim could not be adjudicated in the county court. Hobbs Auto., Inc. v. Dorsey, — So. 2d —, 2005 Miss. LEXIS 90 (Miss. Feb. 10, 2005), opinion withdrawn by 2005 Miss. LEXIS 590 (Miss. Sept. 15, 2005), opinion withdrawn by, substituted opinion at 914 So. 2d 148, 2005 Miss. LEXIS 559 (Miss. 2005).

2. Jurisdiction in general.

Creditor properly brought its claim before a justice court because the county lacked a county court and then appealed to the circuit court, even though a debtor's estate was still open because creditor's action was purely a possessory action. Gandy v. Citicorp, 985 So. 2d 371 (Miss. Ct. App. 2008).

Injunctive order granted by the county court judge was within the meaning of Miss. Code Ann. § 9-9-21(1) as that statute had been interpreted by case law; where property or property interests were involved, the county court had appropriate jurisdiction. Swan v. Hill, 855 So. 2d 459 (Miss. Ct. App. 2003).

3. Jurisdictional amount.

County court has the authority to grant an amendment to the ad damnum clause

even though by doing so it will divest itself of jurisdiction and require the matter to be transferred to either the chancery or circuit courts. Wal-Mart Super Ctr. v. Long, 852 So. 2d 568 (Miss. 2003).

§ 9-9-35. Circuit judges authorized to assign cases and other court duties to county judges where dockets overcrowded.

ATTORNEY GENERAL OPINIONS

Since this section specifically governs the assignment of cases to a county judge when justified by an overcrowded docket, it controls over the more general statute, § 9-7-3, which provides that the senior judge has the authority to assign causes and dockets. Yerger, July 23, 2004, A.G. Op. 04-0312.

At any of the circuit judges may assign criminal causes or matters involving the handling of guilty please, through criminal information, to the county judge. Yerger, July 23, 2004, A.G. Op. 04-0312.

A circuit judge may not assign an entire category of criminal cases or matters involving the handling of guilty pleas through criminal information to a county judge; rather, assignments should be done on a case-by-case basis. Yerger, July 23, 2004, A.G. Op. 04-0312.

Assignment of causes or matters to a county judge pursuant to this section is by consent of the county judge. Therefore, the latter has discretion is accepting assignments while the former does not appear to have the same authority. Yerger, July 23, 2004, A.G. Op. 04-0312.

§ 9-9-36. Chancellors authorized to assign cases and other court duties to county judges where dockets overcrowded.

SOURCES: Laws, 1989, ch. 378, § 3; Laws, 1989, ch. 486, § 1; brought forward without change, Laws, 2010, ch. 442, § 3, eff June 21, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the bringing forward without change of this section.)

Editor's Note — This section was brought forward without change by Laws of 2010, ch. 442, effective from and after June 21, 2010. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of this section, it is not reprinted in this supplement.

By letter dated June 21, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Acts of 1965, as amended and extended, to the bringing forward without change of this section by Laws of 2010, ch. 442.

Amendment Notes — The 2010 amendment brought the section forward without change.

§ 9-9-45. When other counties become eligible for establishment or abolition of court.

SOURCES: Codes, 1930, § 707; 1942, § 1622; Laws, 1926, ch. 131; brought forward without change, Laws, 2010, ch. 442, § 4, eff June 21, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the bringing forward without change of this section.)

Editor's Note — This section was brought forward without change by Laws of 2010, ch. 442, effective from and after June 21, 2010. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of this section, it is not reprinted in this supplement.

By letter dated June 21, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Acts of 1965, as amended and extended, to the bringing forward without change of this section by Laws of 2010, ch. 442.

Amendment Notes — The 2010 amendment brought this section forward without change.

CHAPTER 11

Justice Courts

§ 9-11-2. Additional justice; delivery of dockets and papers on expiration of section.

Editor's Note — Laws of 2007, ch. 588, § 1 provides as follows:

"SECTION 1. (1) There is created a task force to study and assess the duties and services provided by the justice court judges, the training and compensation of justice court judges, the jurisdictional limits of justice courts, uniform rules of procedure for justice courts, whether jury trials should occur in justice courts, when justice court judges are elected, the manner in which justice court judges are elected and the feasibility of nonpartisan elections for justice court judges.

"(2) The task force shall be composed of the following members:

"(a) One (1) appellate judge appointed by the Chief Justice of the Supreme Court, who shall chair the committee.

"(b) Three (3) justice court judges appointed by the Conference of Justice Court Judges.

"(c) Two (2) circuit court clerks appointed by the Circuit Clerks Association.

"(d) One (1) circuit judge appointed by the Conference of Circuit Judges.

"(e) One (1) county court judge appointed by the Conference of County Court Judges.

"(f) One (1) supervisor appointed by the Mississippi Association of Supervisors.

"(g) The Chairman of the Senate Judiciary Committee, Division A, the Chairman of the House of Representatives Judiciary A Committee, the Chairman of the Senate Elections Committee and the Chairman of the House Apportionment and Elections Committee, or their designees, shall serve as legislative liaisons and nonvoting members.

"(3) The member of the task force who is appointed by the Chief Justice of the Supreme Court shall serve as chairman of the task force. The task force shall meet at the call of the chairman and at its first meeting shall select a vice chairman from among its membership. The vice chairman shall also serve as secretary of the task force and shall be responsible for keeping all records of the task force. A majority of the members of the task force shall constitute a quorum.

"(4) The task force shall file a report with the Clerk of the House of Representatives and the Secretary of the Senate containing its findings and recommendations regarding the justice court system by not later than December 1, 2007.

"(5) Legislative members of the committee shall receive per diem, travel or other expenses, if authorized by the Management Committees of the House of Representatives and the Senate, from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; provided that no per diem or expense for attending meetings of the committee shall be paid while the Legislature is in session.

"(6) Nonlegislative members of the task force shall receive no compensation for their service on the task force but may be reimbursed for expenses related to their service on the task force as authorized by law.

"(7) The task force shall be dissolved on December 1, 2007."

§ 9-11-3. Certification of successful completion of courses of training and continuing education and minimum competency examination conducted and administered by Mississippi Judicial College; exemption from competency examination.

(1) Except as otherwise provided herein, no justice court judge elected for a full term of office commencing on or after January 1, 2012, shall exercise the judicial functions of his office or be eligible to take the oath of office until he has filed in the office of the chancery clerk the following two (2) certifications: (a) a certificate of completion of a course of training and education conducted by the Mississippi Judicial College of the University of Mississippi Law Center; and (b) a certificate of successful completion of a minimum competency examination administered by the Mississippi Judicial College of the University of Mississippi Law Center within six (6) months of the beginning of the term for which such justice is elected. A justice court judge who has completed the course of training and education, passed the minimum competency examination, and has satisfied his annual continuing education course requirements, and who is then elected for a succeeding term of office subsequent to the initial term for which he completed the training course, shall not be required to repeat the basic training and education course upon reelection but shall be subject to the continuing education requirements.

(2) In addition to meeting the requirements of subsection (1) of this section, after taking office, each justice court judge shall be required to file annually in the office of the chancery clerk a certificate of completion of a course of continuing education conducted by the Mississippi Judicial College.

(3) The requirements for obtaining each of the certificates in subsections (1) and (2) of this section shall be as provided in Section 9-11-4.

(4) Upon the failure of any justice court judge to file with the chancery clerk the certificates of completion as provided in subsections (1) and (2) of this

section, such justice court judge shall, in addition to any other fine or punishment provided by law for such conduct, not be entitled to compensation for the period of time during which such certificates remain unfiled. If a justice court judge has not filed the required certifications within eight (8) months of the inception of the term, that justice court judge shall forfeit his office, his position shall be declared vacant, and the resulting vacancy shall be filled as provided by Section 23-15-839.

(5) The competency examination requirements in Sections 9-11-3 and 9-11-4 shall not apply to any sitting justice court judges as of July 24, 2008.

SOURCES: Codes, 1942, § 1803.2; Laws, 1964, ch. 330; Laws, 1981, ch. 471, § 15; Laws, 1982, ch. 423, § 28; Laws, 1989, ch. 448, § 1; Laws, 1991, ch. 321, § 1; Laws, 2008, ch. 319, § 2; Laws, 2011, ch. 367, § 1, eff July 5, 2011 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — Laws of 2008, ch. 319, § 1, provides:

"SECTION 1. This act shall be known as the "Justice Court Reform Act of 2008."

On July 24, 2008, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 319, Laws of 2008.

By letter dated July 5, 2011, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Chapter 367, Laws of 2011.

Amendment Notes — The 2008 amendment, in the first sentence of (1), substituted "January 1, 2012" for "January 1, 1992," "oath of office until" for "oath of office unless," inserted "the following two (2) certification: (a) a" and "and (b) a certificate of successful completion of a minimum competency examination administered by the Mississippi Judicial College of the University of Mississippi Law Center," and made minor stylistic changes"; in the last sentence of (1), inserted "passed the minimum competency examination," inserted "basic" following "required to repeat the," added "but shall be subject to the continuing education requirements" at the end, and made minor stylistic changes; and in (4), added the last sentence.

The 2011 amendment added (5).

§ 9-11-4. Basic and continuing education courses for justice court judges; minimum competency examination; exemption from competency examination; remedial courses; costs and expenses.

(1)(a) The Mississippi Judicial College of the University of Mississippi Law Center shall prepare and conduct courses of training for basic and continuing education for justice court judges of this state. The basic course of training shall be known as the "Justice Court Judge Training Course" and shall consist of eighty (80) hours of training. The continuing education course shall be known as the "Continuing Education Course for Justice Court Judges," and shall consist of twenty-four (24) hours of training. The content of the basic and continuing education courses and when and where such courses are to be conducted shall be determined by the Judicial College.

The Judicial College shall issue certificates of completion to those justice court judges who complete such courses.

(b) The Mississippi Judicial College of the University of Mississippi Law Center shall prepare and administer a minimum competency examination, as approved by the Mississippi Supreme Court, upon completion of the required basic course of training for justice court judges. If an elected justice court judge fails to complete the examination or fails the examination, there shall be a remedial twenty-four-hour course to be followed by a second opportunity for the justice court judge to achieve a passing score on the minimum competency examination.

(2) All costs and expenses for preparing and conducting the basic and continuing education courses, the remedial basic course, and the minimum competency examination provided for in subsection (1) of this section shall be paid out of any funds which are made available to the Judicial College upon authorization and appropriation by the Legislature.

(3) The competency examination requirements in Sections 9-11-3 and 9-11-4 shall not apply to any sitting justice court judge as of July 24, 2008.

SOURCES: Laws, 1981, ch. 471, § 16; Laws, 1982, ch. 423, § 28; Laws, 2008, ch. 319, § 3; Laws, 2011, ch. 367, § 2, eff July 5, 2011 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — Laws of 2008, ch. 319, § 1, provides:

"SECTION 1. This act shall be known as the "Justice Court Reform Act of 2008."

On July 24, 2008, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 319, Laws of 2008.

By letter dated July 5, 2011, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Chapter 367, Laws of 2011.

Amendment Notes — The 2008 amendment, in (1), added (b), and redesignated former (1) as present (1)(a); in (1)(a), substituted "consist of eighty (80) hours" for "consist of at least thirty-two (32) hours" and "consist of twenty-four (24) hours" for "consist of at least eighteen (18) hours"; and in (2), inserted "the remedial basic course, and the minimum competency examination," and made a minor stylistic change.

The 2011 amendment added (3).

§ 9-11-5. Courtrooms; offices; insurance.

(1) The justice court judges shall be provided courtrooms by the county and all trials shall be held therein. Such courtrooms shall be in the county courthouse, county office building or any other building within the county deemed appropriate by the board of supervisors.

(2) The county shall provide office space and furnish each justice court office and provide necessary office supplies.

(3) The board of supervisors of each county may secure insurance coverage to protect the office of the justice court clerk against losses due to theft or robbery.

SOURCES: Codes, 1942, § 1803.3; Laws, 1964, ch. 332; Laws, 1979, ch. 476, § 2; Laws, 1981, ch. 471, § 9; Laws, 1982, ch. 423, § 28; Laws, 1986, ch. 367; Laws, 2008, ch. 319, § 4; Laws, 2008, ch. 553, § 2, eff from and after July 1, 2008.

Joint Legislative Committee Note — Section 4 of ch. 319, Laws of 2008, effective from and after July 24, 2008 (the date the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Chapter 319, Laws of 2008), amended this section. Section 2 of ch. 553, Laws of 2008, effective July 1, 2008 (approved May 10, 2008), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 553, Laws of 2008, which contains language that specifically provides that it supersedes § 9-11-5 as amended by Chapter 319, Laws of 2008.

Editor's Note — Laws of 2008, ch. 319, § 1, provides:

"SECTION 1. This act shall be known as the "Justice Court Reform Act of 2008."

Amendment Notes — The first 2008 amendment (ch. 319), added (2)(b).

The second 2008 amendment (ch. 553) deleted former (2)(b), which read: "The sheriff shall provide courtroom security when justice court is in session in accordance with the provisions of Section 19-25-69."

§ 9-11-7. Oath of office and bond.

Every person elected a justice court judge shall, before he enters on the duties of the office, take the oath of office prescribed by Section 155 of the Constitution, and give bond, with sufficient surety, to be payable, conditioned and approved as provided by law and in the same manner as other county officers, in a penalty not less than Fifty Thousand Dollars ($50,000.00); and any party interested may proceed on such bond in a summary way, by motion in any court having jurisdiction of the same, against the principal and surety, upon giving five (5) days' previous notice.

SOURCES: Codes, Hutchinson's 1848, ch. 50, art 7 (1); 1857, ch. 58, art. 3; 1871, § 1298; 1880, § 2186; 1892, § 2393; 1906, § 2722; Hemingway's 1917, § 2221; 1930, § 2070; 1942, § 1804; Laws, 1986, ch. 458, § 12; Reenacted, Laws, 1989, ch. 342, § 1; Laws, 2009, ch. 467, § 2, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment substituted "not less than Fifty Thousand Dollars ($50,000.00)" for "equal to Ten Thousand Dollars ($10,000.00)" preceding "and any party interested may proceed on such bond."

§ 9-11-9. Civil jurisdiction; pecuniary interest in outcome of action.

Justice court judges shall have jurisdiction of all actions for the recovery of debts or damages or personal property, where the principal of the debt, the amount of the demand, or the value of the property sought to be recovered shall not exceed Three Thousand Five Hundred Dollars ($3,500.00).

The justice court judges shall have no pecuniary interest in the outcome of any action once suit has been filed.

SOURCES: Codes, Hutchinson's 1848, ch. 50, art 2 (9); 1857, ch 58, art. 7; 1871, § 1302; 1880, § 2190; 1892, § 2394; 1906, § 2723; Hemingway's 1917, § 2222;

1930, § 2071; 1942, § 1805; Laws, 1964, ch. 333; Laws, 1977, ch. 308; Laws, 1981, ch. 471, § 4; Laws, 1985, ch. 478, § 1; Laws, 1986, ch. 365; Laws, 1995, ch. 573, § 1; Laws, 2008, ch. 319, § 5, eff July 24, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — Laws of 2008, ch. 319, § 1, provides:

"SECTION 1. This act shall be known as the "Justice Court Reform Act of 2008."

On July 24, 2008, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 319, Laws of 2008.

Amendment Notes — The 2008 amendment substituted "Three Thousand Five Hundred Dollars ($3,500.00)" for "Two Thousand Five Hundred Dollars ($2,500.00)."

JUDICIAL DECISIONS

1. Jurisdiction in general.

Mississippi justice courts and the circuit courts shared concurrent jurisdiction in matters in which the amount in controversy exceeded $200 but not $2,500. Arant v. Hubbard, 824 So. 2d 611 (Miss. 2002).

§ 9-11-15. Regular terms of court; nonresident defendant; trial at reasonable time; court of record; power to punish for contempt; designation of at least one-half day per month as traffic court day.

(1) Justice court judges shall hold regular terms of their courts, at such times as they may appoint, not exceeding two (2) and not less than one (1) in every month, at the appropriate justice court courtroom established by the board of supervisors; and they may continue to hold their courts from day to day so long as business may require; and all process shall be returnable, and all trials shall take place at such regular terms, except where it is otherwise provided; but where the defendant is a nonresident or transient person, and it shall be shown by the oath of either party that a delay of the trial until the regular term will be of material injury to him, it shall be lawful for the judge to have the parties brought before him at any reasonable time and hear the evidence and give judgment or where the defendant is a nonresident or transient person and the judge and all parties agree, it shall be lawful for the judge to have the parties brought before him on the day a citation is made and hear the evidence and give judgment. Such court shall be a court of record, with all the power incident to a court of record, including power to fine in the amount of fine and length of imprisonment as is authorized for a municipal court in Section 21-23-7(11) for contempt of court.

(2)(a) In counties with a population of less than one hundred fifty thousand (150,000), each justice court shall designate at least one-half (½) day each month as a traffic court day, sufficient to handle the traffic violations docket of that court, and shall notify all appropriate law enforcement agencies of the date or dates. On the day or days so designated, the justice court shall give priority to all cases involving traffic violations.

(b) In counties with a population of one hundred fifty thousand (150,000) or more, each justice court shall designate at least one (1) day each

month as a traffic court day, sufficient to handle the traffic violations of that court, and shall notify all appropriate law enforcement agencies of the date or dates. On the day or days so designated, the justice court shall give priority to all cases involving traffic violations. The one (1) day may be one (1) whole day or it may be divided into half days as long as one-half (½) day is held in the morning and one-half (½) day is held in the afternoon, in the discretion of the court.

SOURCES: Codes, Hutchinson's 1848, ch. 50, art. 10 (5); 1857, ch. 58, art. 9; 1871, § 1309; 1880, § 2194; 1892, § 2399; 1906, § 2728; Hemingway's 1917, § 2227; 1930, § 2076; 1942, § 1810; Laws, 1981, ch. 471, § 10; Laws, 1982, ch. 423, § 28; Laws, 1990, ch. 349, § 1; Laws, 1993, ch. 344, § 1; Laws, 2010, ch. 500, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment added the (1) designation; and added (2).

§ 9-11-19. Collection and report of fines and penalties.

ATTORNEY GENERAL OPINIONS

Constable fees are considered a "claim" for purposes of payment from the claims docket. Farmer and Malone, Oct. 25, 2002, A.G. Op. #02-0612.

The chancery clerk is not authorized to pay constable fees from the certificate sent by the justice court clerk without the approval of the county board of supervisors. Farmer and Malone, Oct. 25, 2002, A.G. Op. #02-0612.

§ 9-11-20. Service of process or writ outside of issuing county; sharing fees.

ATTORNEY GENERAL OPINIONS

A constable has no jurisdiction to serve process outside the county in which he was elected and therefore may not collect a fee for serving such process. Bean, Aug. 30, 2002, A.G. Op. #02-0505.

A constable may not serve a summons for a Justice Court in a county other than the one in which he was elected. Aldridge, Mar. 31, 2005, A.G. Op. 05-0046.

§ 9-11-27. Appointment of clerk; designation of powers.

ATTORNEY GENERAL OPINIONS

A deputy court clerk has the authority to acknowledge affidavits anywhere in the county at any time, to include after 5:00 p.m. and on weekends. Shirley, Nov. 7, 2003, A.G. Op. 03-0582.

Any county law enforcement officials may serve as deputy clerks as long as they have been officially appointed by the board of supervisors. Aldridge, Apr. 1, 2005, A.G. Op. 05-0111.

An entity of government is not required to prepay court costs prior to commencing a civil action. Erby, Apr. 29, 2005, A.G. Op. 05-0118.

§ 9-11-33. Correction of errors or mistakes in proceedings or records; setting aside proceedings or judgments for good cause.

JUDICIAL DECISIONS

1. Judicial Misconduct.

Recommendation for a public reprimand was not adopted since it was too lenient for a judge who committed willful misconduct under Miss. Const. Art. 6, § 177A by violating Miss. Code Jud. Conduct Canons 1, 2A, 3B(2), 3B(7), 3B(8), and 3C(1) when he engaged in improper ex parte communications; moreover, he ignored Miss. Code Ann. § 9-11-33 and Miss. Unif. R. P. J. Ct. 2.06 when he set aside a final judgment and interfered with orders handed down by another judge. Miss. Comm'n on Judicial Performance v. Britton, 936 So. 2d 898 (Miss. 2006).

While acting in an official capacity, judge violated Miss. Const. art. VI, § 177A, Miss. Code Ann. § 9-11-33, and Miss. Code Jud. Conduct Canons 1, 2(A), 2(B), 3(A), 3(B)(2), 3(B)(7), 3(B)(8), 3(C)(1), 3(C)(2), 4(A), and 4(D)(1), by conducting ex parte communications with parties, by habitually taking civil cases under advisement and failing to render timely decisions or correct orders when necessary; a public reprimand, suspension for 30 days without pay, and payment of the costs of the proceeding was held to be appropriate discipline. Miss. Comm'n on Judicial Performance v. McPhail, 874 So. 2d 441 (Miss. 2004).

CHAPTER 13

Court Reporters and Court Reporting

IN GENERAL

§ 9-13-17. Additional court reporters; compensation of regular reporter when assistant reporter alone is serving.

ATTORNEY GENERAL OPINIONS

County approval is required before a position such as an additional court reporter is submitted to the Administrative Office of Courts at a salary which would exceed the county's allocation of state funds and increase the county's supplemental payment obligation. Hilburn, Aug. 20, 2004, A.G. Op. 04-0394.

§ 9-13-19. Salary; annual report.

(1) Court reporters for circuit and chancery courts shall be paid an annual salary payable by the Administrative Office of Courts not to exceed Forty Thousand Five Hundred Dollars ($40,500.00) for court reporters with five (5)

years experience or less; not to exceed Forty-three Thousand Five Hundred Dollars ($43,500.00) for court reporters who have more than five (5) years experience but less than ten (10) years; and not to exceed Forty-six Thousand Dollars ($46,000.00) for court reporters who have ten (10) years or more experience. In addition, any court reporter performing the duties of a court administrator in the same judicial district in which the person is employed as a court reporter may be paid additional compensation for performing the court administrator duties. The annual amount of the additional compensation shall be set by vote of the judges and chancellors for whom the court administrator duties are performed, with consideration given to the number of hours per month devoted by the court reporter to performing the duties of a court administrator. The additional compensation shall be submitted to the Administrative Office of Courts for approval.

(2) The several counties in each respective court district shall transfer from the general funds of those county treasuries to the Administrative Office of Courts a proportionate amount to be paid toward the annual compensation of the court reporter, including any additional compensation paid for the performance of court administrator duties. The amount to be paid by each county shall be determined by the number of weeks in which court is held in each county in proportion to the total number of weeks court is held in the district. For purposes of this section, the term "compensation" means the gross salary plus all amounts paid for benefits, or otherwise, as a result of employment or as required by employment, but does not include transcript fees otherwise authorized to be paid by or through the counties. However, only salary earned for services rendered shall be reported and credited for retirement purposes. Amounts paid for transcript fees, benefits or otherwise, including reimbursement for travel expenses, shall not be reported or credited for retirement purposes.

For example, if there are thirty-eight (38) scheduled court weeks in a particular district, a county in which court is scheduled five (5) weeks out of the year would have to pay five-thirty-eighths (5/38) of the total annual compensation.

(3) The salary and any additional compensation for the performance of court administrator duties shall be paid in twelve (12) installments on the last working day of each month after it has been duly authorized by the appointing judge or chancellor and an order duly placed on the minutes of the court. Each county shall transfer to the Administrative Office of Courts one-twelfth (1/12) of the amount required to be paid pursuant to subsection (2) of this section by the twentieth day of each month for the salary that is to be paid on the last working day of the month. The Administrative Office of Courts shall pay to the court reporter the total amount of salary due for that month. Any county may pay, in the discretion of the board of supervisors, by the twentieth day of January of any year, the amount due for a full twelve (12) months.

(4) From and after October 1, 1996, all circuit and chancery court reporters will be employees of the Administrative Office of Courts.

(5) No circuit or chancery court reporter shall be entitled to any compensation for any special or extended term of court after passage of this section.

(6) No chancery or circuit court reporter shall practice law in the court within which he or she is the court reporter.

(7) For all travel required in the performance of official duties, the circuit or chancery court reporter shall be paid mileage by the county in which the duties were performed at the same rate as provided for state employees in Section 25-3-41. The court reporter shall file in the office of the clerk of the court which he serves a certificate of mileage expense incurred during that term and payment of such expense to the court reporter shall be paid on allowance by the judge of such court.

SOURCES: Codes 1892, § 4242; 1906, § 4792; Hemingway's 1917, § 3145; 1930, § 718; 1942, § 1633; Laws, 1916, ch. 232; Laws, 1928, ch. 228; Laws, 1942, ch. 303; Laws, 1944, ch. 187; Laws, 1946, ch. 348, §§ 1, 2; Laws, 1948, ch. 265, §§ 1, 2; Laws, 1950, ch. 327, §§ 1-3; Laws, 1952, ch. 237; Laws, 1958, ch. 339; Laws, 1960, ch. 325; Laws, 1966, ch. 351, § 1; Laws, 1966, ch. 435, § 1; Laws, 1970, ch. 395, § 1; Laws, 1973, ch. 484, § 1; Laws, 1977, ch. 449; Laws, 1980, ch. 478; Laws, 1985, ch. 510, § 1; Laws, 1988, ch. 538; Laws, 1989, ch. 350, § 1; Laws, 1990, ch. 433, § 1; Laws, 1993, ch. 550, § 2; Laws, 1993, ch. 518, § 37; Laws, 1996, ch. 414, § 2; Laws, 1997, ch. 570, § 8, eff October 1, 1997; Laws, 2004, ch. 505, § 6, eff August 19, 2004 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Note — By letter dated August 19, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2004, ch. 505, § 6.

Amendment Notes — The 2004 amendment, in the first sentence of (1), deleted "of Thirty-eight Thousand Dollars ($38,000.00)" following "annual salary," and added the language following "Office of Courts."

§ 9-13-25. Duties.

JUDICIAL DECISIONS

1. In general.

In a case alleging exposure to mold and other substances, an issue relating to the failure to have a court reporter present at a hearing for summary judgment was not preserved for review since no objection was made; even if the error had been preserved, such presence was not required under Miss. R. Civ. P. 78 and Miss. Code Ann. § 9-13-25, and the appellate court had no authority to promulgate such a rule. Hosey v. Mediamolle, 963 So. 2d 1267 (Miss. Ct. App. 2007).

BOARD OF CERTIFIED COURT REPORTERS

SEC.

§ 9-13-105. Duties and powers of board.

The board is charged with the duty and vested with the power and authority:

(a) To determine the content of and administer examinations to be given to applicants for certification as a court reporter.

(b) To determine an applicant's ability to make a verbatim record of proceedings which may be used in any court in this state by any recognized system designated by the board and to pass upon the eligibility of applicants for certification.

(c) To issue certificates to those found qualified as court reporters who are in compliance with Section 9-13-109.

(d) To promulgate, amend and revise regulations relevant to its duties as necessary to implement this chapter. Such regulations shall be consistent with the provisions of Sections 9-13-101 through 9-13-121 and shall not be effective until approved by the Supreme Court.

(e) To make studies and, from time to time, recommendations to the Supreme Court concerning matters pertaining to court reporters.

(f) To account to the Supreme Court in all fiscal matters following recognized accounting procedures of the State Auditor.

(g) To exercise jurisdiction over disciplinary matters with regard to certified court reporters, those reporters granted temporary permission as noncertified or nonresident court reporters, those holding themselves out in the State of Mississippi to be court reporters and anyone engaged in the unauthorized practice of court reporting within the State of Mississippi in accordance with rules and regulations adopted by the board.

(h) To enter into contracts, hire staff and do such other things as may be necessary to implement the provisions of Sections 9-13-101 through 9-13-121.

SOURCES: Laws, 1994, ch. 599, § 12; Laws, 2011, ch. 311, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment substituted "a court reporter" for "Certified Shorthand Reporters" in (a); substituted "court reporters" for "Certified Shorthand Reporters" in (c) and (e); and rewrote (g).

§ 9-13-118. Practicing court reporting without certification; filing false information to obtain certification; penalties.

(1) Any person who: (a) undertakes or attempts to undertake the practice of court reporting for remuneration without having first procured a certificate or temporary permission under Sections 9-13-101 through 9-13-123; or (b) knowingly files false information with the board for the purpose of obtaining certification or temporary permission under Sections 9-13-101 through 9-13-123, shall be subject to a civil fine to be imposed by the board of Five Hundred Dollars ($500.00).

(2) Each day's violation shall be considered a separate infraction.

(3) A person who is not authorized to practice court reporting under Sections 9-13-101 through 9-13-123 shall not bring or maintain an action to recover fees for court reporting services that the person performed in violation of this section.

SOURCES: Laws, 2011, ch. 311, § 2, eff from and after July 1, 2011.

§ 9-13-121. Giving of examinations for certification; notice; effect of not passing examination; temporary certificates; photo identification.

(1)(a) Except as otherwise provided in paragraph (b) of this subsection (1), any person graduating from a court reporting school approved by the State of Mississippi or some other state shall be given a temporary certification but shall make application for and pass a Certified Shorthand Reporter's (CSR) examination as is provided in this section.

(b) Any person who is enrolled in a court reporting program or court reporting school, whether in Mississippi or out of state, that is accredited by the National Court Reporting Association, and who graduates prior to November 1, 2008, shall be granted certification without examination.

(2)(a) The Board of Court Reporters shall implement a true CSR examination wherein all examinees are given the option to take any part or parts of the examination independent of the other parts; however, each part, once passed, need not be retaken by that examinee. Any applicant granted a temporary certification or permit shall be allowed not less than thirty-six (36) months after being granted the temporary certification or permit to pass the examination.

(b)(i) Examinations for certification shall be given not less than every six (6) months at a time and place designated by the board. Notification of such examinations shall be given each applicant in writing not less than thirty (30) days before each examination date. Proof of notice of an examination having been sent less than thirty (30) days before an examination date shall automatically extend a temporary certificate for an additional six (6) months beyond what is otherwise provided in this section.

(ii) If an applicant holding temporary certification has not qualified for certification within the required time, the applicant shall be permitted a hearing before the board. If said applicant has passed at least two (2) parts of the examination, the applicant will be given an additional extension of not more than one (1) year.

(iii) If a court reporter is unavailable, the use of audio or video equipment shall be authorized.

(3) Those reporters holding temporary certificates must submit their applications, together with the fee, to the board and take the next scheduled examination. If the applicant holding temporary certification has not qualified for certification within the required time, the applicant shall be deemed unqualified to serve as a reporter until the applicant passes the examination

and receives permanent certification or has been granted an extension according to subsection (2).

(4) Photo identification may be required of any applicant prior to the taking of an examination for security reasons only but shall not be used for discrimination against applicants on the basis of race, gender, age, creed or national origin.

SOURCES: Laws, 1994, ch. 599, § 20; Laws, 2000, ch. 402, § 1; Laws, 2003, ch. 479, § 1, eff from and after passage (approved Apr. 10, 2003.)

Amendment Notes — The 2003 amendment rewrote the section.

§ 9-13-123. Definitions; effect of chapter on courts and individual's rights.

As used in Sections 9-13-101 through 9-13-121:

(a) "Courts" includes all courts. Nothing in this chapter shall be construed as a limitation upon the power of the Supreme Court or of the trial courts to govern the conduct of, and to discipline, official court reporters, nor shall this chapter be construed as any limitation upon the rights of any individual to seek any remedy afforded by law, nor as any exclusive mode of regulating court reporters.

(b) "Court reporter" means a Certified Shorthand Reporter or a Certified Stenomask Reporter.

(c) "The practice of court reporting" means the making of a verbatim record by means of written symbols or abbreviations in pen shorthand, machine shorthand, or oral stenography, also known as steno mask, of testimony or proceedings relevant to matters under the jurisdiction of the courts of the State of Mississippi, all state agencies or the Legislature or any committee or subcommittee thereof, or where appeal to any court of the State of Mississippi is allowable by law.

(d) "The making of a verbatim record" includes the taking of a deposition.

SOURCES: Laws, 1994, ch. 599, § 21; Laws, 2011, ch. 311, § 3, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment rewrote the section.

CHAPTER 19

Commission on Judicial Performance

SEC.

§ 9-19-31. Judicial Performance Fund created; purpose; distribution of monies from fund; fund to be a continuing fund; components of fund.

There is created in the State Treasury a special interest-bearing fund to be known as the Judicial Performance Fund. The purpose of the fund shall be to provide supplemental funding to the Commission on Judicial Performance. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the Commission on Judicial Performance. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of: (a) monies appropriated by the Legislature for the purpose of funding the Commission on Judicial Performance; (b) the interest accruing to the fund; (c) monies received under the provisions of Section 99-19-73; (d) monies received from the federal government; and (e) monies received from such other sources as may be provided by law.

SOURCES: Laws, 2004, ch. 543, § 3, eff from and after July 1, 2004.

CHAPTER 21

Administrative Office of Courts

CREATION AND DUTIES OF ADMINISTRATIVE OFFICE OF COURTS

§ 9-21-1. Administrative Office of Courts established; purpose; "court" defined.

Cross References — Administrative Office of Courts to certify and monitor drug courts, see § 9-23-7.

JUDICIAL DECISIONS

1. Relation to other laws.

Although the Mississippi Administrative Office of the Courts (AOC) receives federal funding for certain programs, its purpose under Miss. Code Ann. § 9-21-1 is to assist in administration of the non-judicial business of the state courts. Therefore, bribes which were allegedly paid by an attorney to two circuit judges to influence the outcome of cases filed in their courts were not connected with the transactions or business of the AOC, and

thus their convictions of federal program bribery under 18 U.S.C.S. § 666 were erroneous. United States v. Whitfield, 590 F.3d 325 (5th Cir. 2009), writ of certiorari denied by 131 S. Ct. 136, 178 L. Ed. 2d 83, 2010 U.S. LEXIS 6417, 79 U.S.L.W. 3196 (U.S. 2010), writ of certiorari denied by 131 S. Ct. 134, 178 L. Ed. 2d 81, 2010 U.S. LEXIS 6353, 79 U.S.L.W. 3196 (U.S. 2010), writ of certiorari denied by 131 S. Ct. 124, 178 L. Ed. 2d 33, 2010 U.S. LEXIS 6208, 79 U.S.L.W. 3196 (U.S. 2010).

§ 9-21-9. Duties and authority of Director.

ATTORNEY GENERAL OPINIONS

County approval is required before a position is submitted for approval by the Administrative Office of Courts at a salary which would increase the county's supplemental payment obligations. Williams, Apr. 2, 2004, A.G. Op. 04-0106.

§ 9-21-13. Director to coordinate functions and duties of administrative personnel; expenditure of state monies.

ATTORNEY GENERAL OPINIONS

County approval is required before a position is submitted for approval by the Administrative Office of Courts at a salary which would increase the county's supplemental payment obligations. Williams, Apr. 2, 2004, A.G. Op. 04-0106.

§ 9-21-14. Comprehensive Electronic Court Systems Fund created; purpose; distribution of monies from fund; continuing fund; pilot program.

(1) There is created in the State Treasury a special fund to be known as the Comprehensive Electronic Court Systems Fund. The purpose of the fund shall be to provide funding for the development, implementation and maintenance of a comprehensive case management and electronic filing system, one of the purposes of which will be to provide duplicate dockets and case files at remote sites. The system will be designed to:

(a) Provide a framework for the seamless, transparent exchange of data among courts and with appropriate law enforcement, children's services and public welfare agencies.

(b) Allow judges and prosecutors to determine whether there are holds or warrants from other jurisdictions for defendants prior to release on bail or otherwise.

(c) Assist related agencies in tracking the court activity of individuals in all participating jurisdictions.

(d) Assist child protection and human services agencies to determine the status of children and caregivers in the participating jurisdictions.

(e) Duplicate and preserve court documents at remote sites so that they may be protected against catastrophic loss.

(f) Improve the ability of the Administrative Office of Courts and the state courts to handle efficiently monies flowing through the courts and to collect delinquent fees, fines and costs.

(g) Enable the state courts and clerks to generate management reports and analysis tools, allowing them to constantly track individual cases and the overall caseload.

(h) Provide a uniform system for docketing and tracking cases and to automatically generate status reports.

(i) Enable the Administrative Office of Courts to acquire statistical data promptly and efficiently.

(j) Make trial court and individual case dockets available to the public online through use of the Internet.

(2) Monies from the fund shall be distributed by the State Treasurer upon warrants issued by the Administrative Office of Courts.

(3) The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature for the purposes of funding the comprehensive case management and electronic filing system;

(b) The interest accruing to the fund;

(c) Monies received from the federal government;

(d) Donations; and

(e) Monies received from such other sources as may be provided by law.

(4) The Supreme Court may utilize and fund as a pilot program any case management and electronic filing system of the Three Rivers Planning and Development District or that of any county or vendor that complies with the data and case management and electronic filing policy standards adopted by the Supreme Court. No statewide comprehensive case management and electronic system shall be implemented by the Mississippi Supreme Court unless such system is approved by the Legislature.

SOURCES: Laws, 2006, ch. 573, § 1; Laws, 2007, ch. 385, § 1, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment substituted "may utilize and fund as a pilot" for "shall utilize as a pilot" in (4).

§ 9-21-43. Mississippi Civil Legal Assistance Fund created; organizations eligible to receive funds.

(1) There is hereby created in the State Treasury a special fund designated as the Civil Legal Assistance Fund. The funds shall be administered by the Supreme Court through the Administrative Office of Courts. The Administrative Office of Courts may also accept monies from any public or private source for deposit into the fund. Money remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned from the investment of monies in the fund shall be deposited to the credit of the funds.

(2) All monies shall be allocated to only those organizations providing legal services to low income Mississippians. Furthermore, no monies from this fund shall be expended to provide legal services in matters currently prohibited by the Legal Services Corporation, Washington, D.C., and no funds shall be expended on persons who are not financially eligible to receive legal services as directed by the Legal Services Corporation, Washington, D.C.

(3) The monies appropriated shall be distributed to eligible legal services programs based on the percentage of poverty population within the program service area, consistent with the formula used by the Legal Services Corporation.

(4) Monies appropriated to the fund may be used to promote increased participation by the private bar in the delivery of legal services to the indigent through the Mississippi Volunteer Lawyers Project.

(5) Recipients of funds shall have the following duties:

(a) To develop, operate and administer programs within their respective service areas that provide free legal services to indigent clients involved in civil matters;

(b) To report annually to the Supreme Court, through the Administrative Office of Courts, on its activities, including providing a copy of its annual audit that accounts for the use of the funds; and

(c) To refund annually all unused or uncommitted funds.

SOURCES: Laws, 2003, ch. 474, § 1, eff from and after July 1, 2003.

§ 9-21-45. Judicial System Operation Fund created; source of money; use of funds.

(1) There is created in the State Treasury a special fund designated as the Judicial System Operation Fund. The funds shall be administered by the Supreme Court through the Administrative Office of Courts. The fund shall consist of monies deposited therein as provided in Section 99-19-72 and monies from any other source designated for deposit into the fund. The Administrative Office of Courts may also accept monies from any public or private source for deposit into the fund. Money remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned from the investment of monies in the fund shall be deposited to the credit of the fund.

(2) Monies in the fund shall be subject to appropriation by the Legislature and may only be used for the purpose of the operation of the judicial system in the state as determined necessary by the Supreme Court and to provide additional funds for the judicial salaries set forth in Section 25-3-25 and Section 9-9-11(8). Monies in the fund used for the purposes described in this section shall be in addition to other funds available from any other source for such purposes.

SOURCES: Laws, 2010, ch. 561, § 2; Laws, 2012, ch. 329, § 2, eff from and after July 1, 2012.

Editor's Note — Laws of 2012, ch. 329, § 11 provides:

"SECTION 11. Sections 1 and 8 of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or January 1, 2013, whichever occurs later; and the remainder of this act shall take effect and be in force from and after July 1, 2012."

Amendment Notes — The 2012 amendment added "and to provide additional funds for the judicial salaries set forth in Section 25-3-25 and Section 9-9-11(8)" to the end of the first sentence in (2).

Cross References — Annual salary supplement for county court judges to be transferred from Judicial System Operation Fund established in this section in monthly installments, see § 9-9-11.

Portion of fees collected by clerk of the supreme court to be deposited in Judicial System Operation Fund established in this section, see § 25-7-3.

Portion of fees collected by clerks of the circuit court to be deposited in Judicial System Operation Fund established in this section, see § 25-7-13.

Portion of fees collected by clerks of chancery courts to be deposited in Judicial System Operation Fund established in this section, see § 25-7-9.

STUDIES OF ADMINISTRATIVE OFFICE OF COURTS

§ 9-21-51. Study of storage of court and court-related records; promulgation of rules and regulations for electronic filing and storage of court records.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

ADMINISTRATIVE OFFICE OF THE COURTS TO ESTABLISH PROGRAM FOR USE OF INTERPRETERS IN ALL COURTS

SEC.

§ 9-21-71. Definitions.

The following words and phrases shall have the meanings ascribed to them unless the context clearly requires otherwise:

(a) "Non-English speaker" means any party or witness who cannot readily understand or communicate in spoken English and who consequently cannot equally participate in or benefit from the proceedings unless an interpreter is available to assist the individual. The fact that a person for whom English is a second language knows some English does not prohibit that individual from being allowed to have an interpreter.

(b) "Interpreter" means any person authorized by a court and competent to translate or interpret oral or written communication in a foreign language during court proceedings.

(c) "Court proceedings" means a proceeding before any court of this state or a grand jury hearing.

SOURCES: Laws, 2006, ch. 569, § 1, eff from and after July 1, 2006.

§ 9-21-73. Program established.

(1) The Director of the Administrative Office of Courts shall establish a program to facilitate the use of interpreters in all courts of the State of Mississippi.

(2)(a) The Administrative Office of Courts shall prescribe the qualifications of and certify persons who may serve as certified interpreters in all courts of the State of Mississippi in bilingual proceedings. The Director of the Administrative Office of Courts may set and charge a reasonable fee for certification.

(b) The director shall maintain a current master list of all certified interpreters and shall report annually to the Supreme Court on the frequency of requests for and the use and effectiveness of the interpreters.

(3) In all state court bilingual proceedings, the presiding judicial officer, with the assistance of the director, shall utilize the services of a certified interpreter to communicate verbatim all spoken or written words when the necessity therefor has been determined pursuant to Section 9-21-79.

(4) All state courts shall maintain on file in the office of the clerk of the court a list of all persons who have been certified as interpreters in accordance with the certification program established pursuant to this section.

SOURCES: Laws, 2006, ch. 569, § 2, eff from and after July 1, 2006.

§ 9-21-75. Compensation.

The court may appoint either an interpreter who is paid or a volunteer interpreter.

SOURCES: Laws, 2006, ch. 569, § 3, eff from and after July 1, 2006.

§ 9-21-77. Oath, confidentiality and public comment.

(1) Prior to providing any service to a non-English speaking person, the interpreter shall subscribe to an oath that he or she shall interpret all communications in an accurate manner to the best of his or her skill and knowledge.

(2) The oath shall conform substantially to the following form:

INTERPRETER'S OATH

"Do you solemnly swear or affirm that you will faithfully interpret from (state the language) into English and from English into (state the language)

the proceedings before this court in an accurate manner to the best of your skill and knowledge?"

(3) Interpreters shall not voluntarily disclose any admission or communication that is declared to be confidential or privileged under state law. Out-of-court disclosures made by a non-English speaker communicating through an interpreter shall be treated by the interpreter as confidential or privileged or both unless the court orders the interpreter to disclose such communications or the non-English speaker waives such confidentiality or privilege.

(4) Interpreters shall not publicly discuss, report or offer an opinion concerning a matter in which they are engaged, even when that information is not privileged or required by law to be confidential.

(5) The presence of an interpreter shall not affect the privileged nature of any discussion.

SOURCES: Laws, 2006, ch. 569, § 4, eff from and after July 1, 2006.

§ 9-21-79. Determination of need for an interpreter.

(1) An interpreter is needed and a court interpreter shall be appointed when the judge determines, after an examination of a party or witness, that: (a) the party cannot understand and speak English well enough to participate fully in the proceedings and to assist counsel; or (b) the witness cannot speak English so as to be understood directly by counsel, court and jury.

(2) The court should examine a party or witness on the record to determine whether an interpreter is needed if:

(a) A party or counsel requests such an examination;

(b) It appears to the court that the party or witness may not understand and speak English well enough to participate fully in the proceedings; or

(c) If the party or witness requests an interpreter.

The fact that a person for whom English is a second language knows some English should not prohibit that individual from being allowed to have an interpreter.

(3) After the examination, the court should state its conclusion on the record, and the file in the case shall be clearly marked and data entered electronically when appropriate by court personnel to ensure that an interpreter will be present when needed in any subsequent proceeding.

(4) Upon a request by the non-English speaking person, by counsel, or by any other officer of the court, the court shall determine whether the interpreter provided is able to communicate accurately with and translate information to and from the non-English speaking person. If it is determined that the interpreter cannot perform these functions, the court shall provide the non-English speaking person with another interpreter.

SOURCES: Laws, 2006, ch. 569, § 5, eff from and after July 1, 2006.

§ 9-21-81. Interpreter's fees and expenses.

(1) Any volunteer interpreter providing services under this act shall be paid reasonable expenses by the court.

(2) The expenses of providing an interpreter in any court proceeding may be assessed by the court as costs in the proceeding, or in the case of an indigent criminal defendant to be paid by the county.

SOURCES: Laws, 2006, ch. 569, § 6, eff from and after July 1, 2006.

CHAPTER 23

Drug Courts

SEC.

§ 9-23-1. Short title.

This chapter shall be known and may be cited as the Alyce Griffin Clarke Drug Court Act.

SOURCES: Laws, 2003, ch. 515, § 1, eff from and after July 1, 2003.

Cross References — Courts, generally, see §§ 9-1-1 et seq.

Administrative Office of Courts, see §§ 9-21-1 et seq.

Uniform Controlled Substances Law, see §§ 41-29-101 et seq.

General narcotic drug regulations, see §§ 41-29-301 et seq.

Alcoholism and alcohol abuse prevention control and treatment, see §§ 41-30-1 et seq.

Commitment of alcoholics and drug addicts for treatment see §§ 41-31-1 et seq. and 41-32-1 et seq.

Youth Court, generally, see §§ 43-21-101 et seq.

ATTORNEY GENERAL OPINIONS

The drug court judge could establish rules as to who is responsible and required to collect drug court revenues. Woods, Feb. 24, 2006, A.G. Op. 06-0055.

§ 9-23-3. Legislative intent.

(1) The Legislature of Mississippi recognizes the critical need for judicial intervention to reduce the incidence of alcohol and drug use, alcohol and drug addiction, and crimes committed as a result of alcohol and drug use and alcohol and drug addiction. It is the intent of the Legislature to facilitate local drug court alternative orders adaptable to chancery, circuit, county, youth, municipal and justice courts.

(2) The goals of the drug courts under this chapter include the following:

(a) To reduce alcoholism and other drug dependencies among adult and juvenile offenders and defendants and among respondents in juvenile petitions for abuse, neglect or both;

(b) To reduce criminal and delinquent recidivism and the incidence of child abuse and neglect;

(c) To reduce the alcohol-related and other drug-related court workload;

(d) To increase personal, familial and societal accountability of adult and juvenile offenders and defendants and respondents in juvenile petitions for abuse, neglect or both; and

(e) To promote effective interaction and use of resources among criminal and juvenile justice personnel, child protective services personnel and community agencies.

SOURCES: Laws, 2003, ch. 515, § 2, eff from and after July 1, 2003.

JUDICIAL DECISIONS

1. Transfer to Drug Court.

Where police found drugs in the vehicle of a minor, he was charged with possession of more than thirty grams of marijuana. The circuit court did not abuse its discretion by denying defendant's untimely motion to transfer the case to drug court; defendant had no right to have his case transferred. Jim v. State, 911 So. 2d 658 (Miss. Ct. App. 2005).

§ 9-23-5. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed unless the context clearly requires otherwise:

(a) "Drug court" means an immediate and highly structured intervention process for substance abuse treatment of eligible defendants or juveniles that:

(i) Brings together substance abuse professionals, local social programs and intensive judicial monitoring; and

(ii) Follows the key components of drug courts published by the Drug Court Program Office of the United States Department of Justice.

(b) "Chemical tests" means the analysis of an individual's: (i) blood, (ii) breath, (iii) hair, (iv) sweat, (v) saliva, (vi) urine; or (vii) other bodily substance to determine the presence of alcohol or a controlled substance.

SOURCES: Laws, 2003, ch. 515, § 3, eff from and after July 1, 2003.

§ 9-23-7. Administrative Office of Courts to certify and monitor drug courts.

The Administrative Office of Courts shall be responsible for certification and monitoring of local drug courts according to standards promulgated by the State Drug Courts Advisory Committee.

SOURCES: Laws, 2003, ch. 515, § 4, eff from and after July 1, 2003.

Cross References — Administrative Office of Courts, see §§ 9-21-1 et seq.

§ 9-23-9. State Drug Courts Advisory Committee created; recommendations; rules and regulations.

(1) The State Drug Courts Advisory Committee is established to develop and periodically update proposed statewide evaluation plans and models for monitoring all critical aspects of drug courts. The committee must provide the proposed evaluation plans to the Chief Justice and the Administrative Office of Courts. The committee shall be chaired by the Director of the Administrative Office of Courts and shall consist of not less than seven (7) members nor more than eleven (11) members appointed by the Supreme Court and broadly representative of the courts, law enforcement, corrections, juvenile justice, child protective services and substance abuse treatment communities.

(2) The State Drug Courts Advisory Committee may also make recommendations to the Chief Justice, the Director of the Administrative Office of Courts and state officials concerning improvements to drug court policies and procedures. The committee may make suggestions as to the criteria for eligibility, and other procedural and substantive guidelines for drug court operation.

(3) The State Drug Courts Advisory Committee shall act as arbiter of disputes arising out of the operation of drug courts established under this chapter and make recommendations to improve the drug courts; it shall also make recommendations to the Supreme Court necessary and incident to compliance with established rules.

(4) The State Drug Court Advisory Committee shall establish through rules and regulations a viable and fiscally responsible plan to expand the number of adult and juvenile drug court programs operating in Mississippi. These rules and regulations shall include plans to increase participation in existing and future programs while maintaining their voluntary nature.

SOURCES: Laws, 2003, ch. 515, § 5; Laws, 2008, ch. 390, § 1, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment added (4).

§ 9-23-11. Requirements for alcohol and drug intervention component; rules and special orders; employees of drug court; regulation; fees and costs.

(1) A drug court may establish an alcohol and drug intervention component provided all the following requirements are met:

(a) The drug court established by the court is certified by the Administrative Office of Courts;

(b) The court that established the drug court determines that in order to fully implement the purposes of the drug court that the drug and alcohol intervention component is necessary; and

(c) The court must submit a petition for approval to the Administrative Office of Courts containing the following:

(i) A full description of a proposed intervention component.

(ii) A budget supported by statistics.

(iii) Details on the implementation of the intervention component.

(2) Each individual drug court judge may establish rules and may make special orders and rules as necessary that do not conflict with rules promulgated by the Supreme Court.

(3) A drug court may appoint such full- or part-time employees it deems necessary for the work of the drug court and shall fix the compensation of those employees. Such employees shall serve at the will and pleasure of the judge or the judge's designee.

(4) Drug court employees or contractors shall perform duties the court assigns.

(5) A drug court established under this chapter is subject to the regulatory powers of the Administrative Office of Courts as set forth in Section 9-23-15.

(6) Each individual drug court is responsible for the administration of the drug and alcohol intervention component of that court.

(7)(a) The costs of participation in an alcohol and drug services component required by the drug court established by this chapter may be paid by the participant or out of user fees or such other state, federal or private funds that may, from time to time, be made available.

(b) The court may assess such reasonable fees for participation and may impose sanctions that it deems appropriate.

SOURCES: Laws, 2003, ch. 515, § 6, eff from and after July 1, 2003.

§ 9-23-13. Intervention services; certification of inpatient treatment programs.

(1) A drug court's alcohol and drug intervention component may provide for eligible individuals a range of necessary court intervention services, including, but not limited to, the following:

(a) Screening for eligibility and other appropriate services;

(b) Clinical assessment;
(c) Education;
(d) Referral;
(e) Service coordination and case management; and
(f) Counseling and rehabilitative care.

(2) Any inpatient treatment or inpatient detoxification program ordered by the court shall be certified by the Department of Mental Health, other appropriate state agency or the equivalent agency of another state.

SOURCES: Laws, 2003, ch. 515, § 7, eff from and after July 1, 2003.

Cross References — Commitment of alcoholics and drug addicts for treatment, see §§ 41-31-1 et seq. and 41-32-1 et seq.

§ 9-23-15. Requirements for participation in drug courts.

(1) In order to be eligible for alternative sentencing through a local drug court, the participant must satisfy each of the following criteria:

(a) The participant cannot have any felony convictions for any offenses that are crimes of violence.

(b) The crime before the court cannot be a crime of violence.

(c) Other criminal proceedings alleging commission of a crime of violence cannot be pending against the participant.

(d) The participant cannot have been currently charged with burglary of an occupied dwelling.

(e) The crime before the court cannot be a charge of driving under the influence of alcohol or any other drug or drugs that resulted in the death of a person.

(f) The crime charged cannot be one of distribution, sale, possession with intent to distribute, production, manufacture or cultivation of controlled substances, nor can the participant have a prior conviction for same.

(2) Participation in the services of an alcohol and drug intervention component shall be open only to the individuals over whom the court has jurisdiction, except that the court may agree to provide the services for individuals referred from another drug court. In cases transferred from another jurisdiction, the receiving judge shall act as a special master and make recommendations to the sentencing judge.

(3)(a) As a condition of participation in a drug court, a participant may be required to undergo a chemical test or a series of chemical tests as specified by the drug court. A participant is liable for the costs of all chemical tests required under this section, regardless of whether the costs are paid to the drug court or the laboratory; however, if testing is available from other sources or the program itself, the judge may waive any fees for testing.

(b) A laboratory that performs a chemical test under this section shall report the results of the test to the drug court.

(4) A person does not have a right to participate in drug court under this chapter. The court having jurisdiction over a person for a matter before the

court shall have the final determination about whether the person may participate in drug court under this chapter.

SOURCES: Laws, 2003, ch. 515, § 8; Laws, 2011, ch. 366, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment added the last sentence in (4); and made some minor stylistic changes.

JUDICIAL DECISIONS

1. No right to transfer.

Circuit court did not err in dismissing an inmate's motion for post-conviction collateral relief because pursuant to Miss. Code Ann. § 9-23-15, the inmate had no right to attend drug court. the inmate had no right to have his case transferred to the drug court. Phillips v. State, 25 So. 3d 404 (Miss. Ct. App. 2010).

Where police found drugs in the vehicle of a minor, he was charged with possession of more than thirty grams of marijuana. The circuit court did not abuse its discretion by denying his untimely motion to transfer the case to drug court; defendant did not have an equal protection claim since no one has the right to attend the drug court. Jim v. State, 911 So. 2d 658 (Miss. Ct. App. 2005).

Post-conviction relief was denied in case where inmate argued his case should have been transferred to drug court under Miss. Code Ann. § 9-23-15; pursuant to that section, an inmate has no right to have his case transferred to the drug court. Phillips v. State, 25 So. 3d 404 (Miss. Ct. App. 2010).

ATTORNEY GENERAL OPINIONS

A person may be eligible for sentencing through drug court if they have been charged under Section 41-29-313, commonly known as the "precursor" statute. Chamberlin, Oct. 27, 2006, A.G. Op. 06-0547.

A person may be eligible for sentencing through drug court if they have been charged under Section 97-1-1, where the "conspiracy" is to commit a violation of Sections 41-29-139 (b)(1) or 41-29-139(c)(2)(D) or 41-29-313. Chamberlin, Oct. 27, 2006, A.G. Op. 06-0547.

The definition of "occupied dwelling" in subsection (1)(d) of this section requires that a person actually be present in the dwelling at the time of the burglary. Chamberlin, Oct. 27, 2006, A.G. Op. 06-0547.

§ 9-23-17. Authority of Administrative Office of Courts.

With regard to any drug court established under this chapter, the Administrative Office of Courts may do the following:

(a) Ensure that the structure of the intervention component complies with rules adopted under this section and applicable federal regulations.

(b) Revoke the authorization of a program upon a determination that the program does not comply with rules adopted under this section and applicable federal regulations.

(c) Make agreements and contracts to effectuate the purposes of this chapter with:

(i) Another department, authority or agency of the state;

(ii) Another state;

(iii) The federal government;

(iv) A state-supported or private university; or

(v) A public or private agency, foundation, corporation or individual.

(d) Directly, or by contract, approve and certify any intervention component established under this act.

(e) Require, as a condition of operation, that each drug court created or funded under this chapter be certified by the Administrative Office of Courts.

(f) Adopt rules to implement this chapter.

SOURCES: Laws, 2003, ch. 515, § 9, eff from and after July 1, 2003.

Cross References — Administrative Office of Courts, see §§ 9-21-1 et seq.

§ 9-23-19. Funding for drug courts.

(1) All monies received from any source by the drug court shall be accumulated in a fund to be used only for drug court purposes. Any funds remaining in this fund at the end of a fiscal year shall not lapse into any general fund, but shall be retained in the drug court fund for the funding of further activities by the drug court.

(2) A drug court may apply for and receive the following:

(a) Gifts, bequests and donations from private sources.

(b) Grant and contract money from governmental sources.

(c) Other forms of financial assistance approved by the court to supplement the budget of the drug court.

SOURCES: Laws, 2003, ch. 515, § 10, eff from and after July 1, 2003.

ATTORNEY GENERAL OPINIONS

Section 9-13-19 permits an agreement between a county and other governmental entities to whom drug testing equipment has been loaned to specify that the fees charged for use of the machine and related costs be paid directly to the county juvenile drug court. Nowak, Dec. 16, 2005, A.G. Op. 05-0598.

§ 9-23-21. Immunity for drug court staff.

The director and members of the professional and administrative staff of the drug court who perform duties in good faith under this chapter are immune from civil liability for:

(a) Acts or omissions in providing services under this chapter; and

(b) The reasonable exercise of discretion in determining eligibility to participate in the drug court.

SOURCES: Laws, 2003, ch. 515, § 11, eff from and after July 1, 2003.

§ 9-23-23. Successful completion of drug court may result in expunction of criminal record.

If the participant completes all requirements imposed upon him by the drug court, including the payment of fines and fees assessed, the charge and prosecution shall be dismissed. If the defendant or participant was sentenced at the time of entry of plea of guilty, the successful completion of the drug court order and other requirements of probation or suspension of sentence will result in the record of the criminal conviction or adjudication being expunged. However, no expunction of any implied consent violation shall be allowed.

SOURCES: Laws, 2003, ch. 515, § 12, eff from and after July 1, 2003.

DRUG COURT FUND

SEC.

§ 9-23-51. Drug Court Fund created; purpose; distribution of monies from fund; fund to be a continuing fund; components of fund.

There is created in the State Treasury a special interest-bearing fund to be known as the Drug Court Fund. The purpose of the fund shall be to provide supplemental funding to all drug courts in the state. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the Administrative Office of Courts, pursuant to procedures set by the State Drug Courts Advisory Committee to assist both juvenile drug courts and adult drug courts. Funds from other sources shall be distributed to the drug courts in the state based on a formula set by the State Drug Courts Advisory Committee. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of: (a) monies appropriated by the Legislature for the purposes of funding drug courts; (b) the interest accruing to the fund; (c) monies received under the provisions of Section 99-19-73; (d) monies received from the federal government; and (e) monies received from such other sources as may be provided by law.

SOURCES: Laws, 2004, ch. 543, § 1; Laws, 2005, 2nd Ex Sess, ch. 1, § 5, eff from and after July 1, 2005.

Amendment Notes — The 2005 amendment, 2nd Ex Sess, ch. 1, deleted "to the drug courts where the respective violations occur in the state" at the end of the third sentence.

TITLE 11

CIVIL PRACTICE AND PROCEDURE

CHAPTER 1

Practice and Procedure Provisions Common to Courts

§ 11-1-1. Before whom oaths may be taken.

JUDICIAL DECISIONS

1. In general.

Petitioner failed to furnish affidavits or show cause why he could not furnish affidavits to support his claims that he was shackled in front of the jury, as required by Miss. Code Ann. §§ 99-39-9(1)(e), 11-1-1; although the petitioner referred to statements as "affidavits," they had not been notarized before any official. Wilcher v. State, 863 So. 2d 719 (Miss. 2003), cert. denied, — U.S. —, 124 S. Ct. 2917, 159 L. Ed. 2d 821 (2004).

For a murder trial taking place in Tennessee, a court reporter was authorized to

take the deposition of a witness in Mississippi. State v. Powers, — S.W.3d —, 2002 Tenn. LEXIS 768 (Tenn. Jan. 6, 2002).

ATTORNEY GENERAL OPINIONS

This section gives the mayor of a municipality the authority to administer oaths and therefore swear other public officials into office. Sanford, Aug. 13, 2004, A.G. Op. 04-0375.

§ 11-1-8. Advertising by attorneys not admitted to practice in Mississippi prohibited.

The Legislature recognizes that attorneys should be licensed by the State of Mississippi before engaging in any solicitation of clients in this state. Such licensing of attorneys protects the people of Mississippi in that The Mississippi Bar has direct jurisdiction over attorneys licensed by it. The Mississippi Supreme Court can act against such licensed attorneys in the event that such licensed attorneys commit violations of Mississippi law, court rules and rules of ethics for attorneys. The Legislature finds that this section is necessary for the protection of the people of Mississippi. An attorney who is not admitted to The Mississippi Bar shall not advertise his legal services in this state for the purpose of soliciting prospective clients for commencement of any civil action in this state, or for the purpose of soliciting clients for any civil action already commenced or pending in this state, unless the attorney who is not a member of The Mississippi Bar has associated an attorney who (a) is a member of The Mississippi Bar; and (b) will be associated and actively working on substantial aspects in any civil action filed on behalf of a client solicited as a result of the advertisement. A law firm composed of both attorneys who are members of The Mississippi Bar and attorneys who are not members of The Mississippi Bar may advertise in this state if a majority of the members of the firm are members of The Mississippi Bar. For purposes of this section, a listing in the residential or business section of the white pages of a telephone book shall not be an advertisement.

SOURCES: Laws, 2002, 3rd Ex Sess, ch. 4, § 12, effective from and after January 1, 2003.

RESEARCH REFERENCES

Law Reviews. Now Open for Business: The Transformation of Mississippi's Legal Climate, 24 Miss. C. L. Rev. 393, Spring, 2005.

§ 11-1-16. Proceedings in vacation; jurisdiction and authority of judge.

JUDICIAL DECISIONS

1. In general.
2. Applicability.

1. In general.

Trial court did not err in relying on the clerk's documentation as to when defendant's motion to reconsider sentence was truly filed; a judge may not alter or vacate a sentence once the term of court the defendant was sentenced in has ended, thus defendant was four days late, for jurisdictional purposes, in filing his motion; this motion could not be considered "pending" under Miss. Code Ann. § 11-1-16, because the motion was not filed before the term of court ended. Ducote v. State, 970 So. 2d 1309 (Miss. Ct. App. 2007).

2. Applicability.

Trial court did not abuse its discretion in denying defendant's motion to reconsider a 10-year prison sentence for the sale of crack cocaine where the term of court in which defendant was sentenced had ended. Defendant did not qualify under the exception in Miss. Code Ann. § 11-1-16(1), as defendant's motion was not pending when the court term ended. McGee v. State, 976 So. 2d 954 (Miss. Ct. App. 2008).

§ 11-1-17. Time for rendition of final decree; right of appeal where decree not entered within required time.

JUDICIAL DECISIONS

1. In general.

Circuit court did not err in affirming the decision of a county board of supervisors to rezone certain property from agricultural and very low density residential to general industry because substantial evidence was before the board to support its decision, which was fairly debatable and could not be disturbed on appeal, and the impact of a hurricane on the area was an underlying concern and a significant factor in the change that had occurred in the area sought to be rezoned; the board was well aware of the impact of the hurricane on the county, and it implemented proper procedures for determining the rezoning of the area. Edwards v. Harrison County Bd. of Supervisors, 22 So. 3d 268 (Miss. 2009).

§ 11-1-18. Bench trials allowed in certain cases where parties agree.

If the parties to a cause of action agree, any claim filed alleging damages may receive a bench trial which shall be conducted in two hundred seventy (270) days or less after the cause of action has been filed. The cause of action shall be a priority item in the court.

SOURCES: Laws, 2004, 1st Ex. Sess., ch. 1, § 18, eff from and after September 1, 2004.

§ 11-1-27. Bonds payable to the state in certain cases.

ATTORNEY GENERAL OPINIONS

Bond which secures the patient funds held by the state must be payable to the state. Hendrix, Jan. 3, 2003, A.G. Op. #02-0753.

§ 11-1-52. Limitations on charges permitted for photocopying patients' records by medical provider; physicians to make reasonable charges for depositions; limitations on charges permitted for execution of patient-requested medical record affidavit by medical provider; medical providers to comply with HIPAA.

(1) Any medical provider or hospital or nursing home or other medical facility shall charge no more than the following amounts to patients or their representatives for photocopying any patient's records: Twenty Dollars ($20.00) for pages one (1) through twenty (20); One Dollar ($1.00) per page for the next eighty (80) pages; Fifty Cents (50¢) per page for all pages thereafter. Ten percent (10%) of the total charge may be added for postage and handling. Fifteen Dollars ($15.00) may be recovered by the medical provider or hospital or nursing home or other medical facility for retrieving medical records in archives at a location off the premises where the facility/office is located.

(2) A physician shall only charge normal, reasonable and customary charges for a deposition related to a patient that the physician is treating or has treated.

(3) Any medical provider, hospital, nursing home or other medical facility shall charge no more than Twenty-five Dollars ($25.00) for executing a medical record affidavit, when the affidavit is requested by the patient or the patient's representative.

(4) In charging the fees authorized under subsection (1) of this section, the medical provider, hospital, nursing home or other medical facility shall comply with the federal Health Insurance Portability and Accountability Act (HIPAA).

SOURCES: Laws, 2004, 1st Ex. Sess., ch. 2, § 1; Laws, 2006, ch. 588, § 1, eff from and after passage (approved Apr. 21, 2006.)

Amendment Notes — The 2006 amendment added (3) and (4).

JUDICIAL DECISIONS

1. Unconscionability.

Provision in a nursing home's admission agreement setting the costs for requested copies at $ 3 per page was in violation of the law; hence, a court ordered the provision stricken from the admission agreement. Trinity Mission Health & Rehab. of Clinton v. Estate of Scott, 19 So. 3d 735 (Miss. Ct. App. 2008), appeal dismissed by 2008 Miss. LEXIS 367 (Miss. July 31, 2008).

Pursuant to Miss. Code Ann. § 11-1-52(1), certain clauses had to be stricken from the admissions agreement as they were unconscionable; thus, the trial court erred in finding the entire admissions

agreement to be unenforceable and in denying the nursing home's motion to compel arbitration. Trinity Mission of Clinton, LLC v. Barber, 988 So. 2d 910 (Miss. Ct. App. 2007), appeal dismissed by 2008 Miss. LEXIS 185 (Miss. Apr. 17, 2008).

ATTORNEY GENERAL OPINIONS

Section 11-1-52 limits collection of copying fees from "patients or their representative"; the county medical examiner/investigator is not the patient or her representative and has the authority, pursuant to Section 41-61-63(2)(a), to inspect and copy medical records of a decedent. Meredith, Jan. 20, 2006, A.G. Op. 06-0611.

§ 11-1-54. Assessment for filing frivolous claims.

If a party files any pleading in a civil action which in the opinion of the court is frivolous, the court may impose an assessment of not more than One Thousand Dollars ($1,000.00) against each party and attorney of record for the party filing the pleading. Such assessment shall be in addition to any other assessments, penalties or sanctions authorized by law or otherwise. The proceeds of any assessment imposed under this section shall be paid to the Mississippi Volunteer Lawyers Project, Inc.

SOURCES: Laws, 2002, 3rd Ex. Sess., ch. 4, § 13, eff from and after Jan. 1, 2003.

RESEARCH REFERENCES

Law Reviews. Now Open for Business: The Transformation of Mississippi's Legal Climate, 24 Miss. C. L. Rev. 393, Spring, 2005.

§ 11-1-55. Authority to impose condition of additur or remittitur.

JUDICIAL DECISIONS

1. In general.
2. Particular cases—Additur.
3. —Remittitur.

1. In general.

Any party aggrieved by the amount of damages awarded pursuant to a jury verdict is allowed to file a motion for additur or remittitur under Miss. Code Ann. § 11-1-55. Dedeaux v. Pellerin Laundry, Inc., 947 So. 2d 900 (Miss. 2007).

If the trial judge grants a motion for an additur or remittitur, such grant of an additur or remittitur is to take effect only if accepted by all the parties; if all the parties do not agree, then each has the right to either demand a new trial on damages or appeal the order asserting an abuse of discretion on the part of the trial judge. Dedeaux v. Pellerin Laundry, Inc., 947 So. 2d 900 (Miss. 2007).

Where plaintiff driver was injured when defendant driver struck him from the rear, the record showed he was examined following the accident and was not found to have had any skeletal injuries, that he returned to work the next day, and that not until two months later did he complain of shoulder or neck pain, which was treated with manipulative therapy and anti-inflammatory medications. The record also showed that he had two other work related accidents before filing suit almost three years after the accident; thus, where he obtained a verdict for $ 1500, representing his medical expenses and other minor expenses on the date of

the accident, the trial court did not abuse its discretion in denying an additur for medical costs incurred after the accident or lost wages. Colville v. Davidson, 934 So. 2d 1028 (Miss. Ct. App. 2006), writ of certiorari denied by 933 So. 2d 982, 2006 Miss. LEXIS 382 (Miss. 2006).

Appellate court held that the trial court did not err in rejecting the facility's request for remittitur or company's request for an additur under Miss. Code Ann. § 11-1-55 as the jury's calculation of profits appeared to be based on the evidence. Benchmark Health Care Ctr., Inc. v. Cain, 912 So. 2d 175 (Miss. Ct. App. 2005).

2. Particular cases—Additur.

In a personal injury action, the trial court did not err in failing to impose an additur, pursuant to Miss. Code Ann. § 11-1-55 (Rev. 2002), because the defendant provided sufficient evidence in support of its case from which the jury could have reasonably concluded that the plaintiff's personal injuries were not caused by the defendant's negligence. Hubbard v. Delta Sanitation of Miss., 64 So. 3d 547 (Miss. Ct. App. 2011).

Law was clear that the stopped driver was entitled to all past, present, and future medical damages caused by the other driver's negligence and the trial court erred in denying the stopped driver's motion for a new trial on the sole issue of damages. The discrepancy between the amount of damages that the stopped driver requested and the much lower verdict, coupled with the continuous requests from the jury while in deliberation, suggested that the jury was confused by the jury instructions or departed from its oath, and that the verdict was a result of bias, passion, and prejudice. Thompson v. Dung Thi Hoang Nguyen, 86 So. 3d 251 (Miss. Ct. App. 2011), reversed by 86 So. 3d 232, 2012 Miss. LEXIS 195 (Miss. 2012), reversed by 86 So. 3d 232, 2012 Miss. LEXIS 195 (Miss. 2012).

In an action for damages, where here was no finding that the jury was influenced by bias, prejudice, or passion, or that the damages awarded were contrary to the overwhelming weight of credible evidence, the trial court abused its discretion in ordering additur under Miss. Code Ann. § 11-1-55 (Rev. 2002). Evidence supported the jury's verdict and the verdict was not so unreasonable as to strike mankind at first blush as being beyond all measure, unreasonable in amount and outrageous. Miss. State Fedn. of Colored Women's Club Hous. for the Elderly in Clinton, Inc. v. L. R., 62 So. 3d 351 (Miss. 2010).

In a negligent entrustment action, the appellate court lacked jurisdiction to hear the owner of an utility terrain vehicle's appeal of a motion for judgment notwithstanding the verdict before the trial court had an opportunity to rule on the injured passenger's second request of a new trial on damages following her rejection of a proposed additur. Davis v. Walters, 54 So. 3d 272 (Miss. Ct. App. 2010), writ of certiorari dismissed by 2011 Miss. LEXIS 106 (Miss. Feb. 17, 2011).

Trial court's order granting the additur simply found that the motion was well taken and should have been granted, but the trial court's failure to indicate its specific findings in granting the additur was an abuse of discretion; however, that did not preclude the trial court, on remand, from granting the additur. Rather, if the trial court chose so, there had to be adequate findings to support the additur, and thus, the appellate court remanded the case to the trial court to either reinstate the jury's verdict or consider the additur in accordance with the applicable statutory guidance. J. Criss Builder, Inc. v. White, 35 So. 3d 541 (Miss. Ct. App. 2009), writ of certiorari denied en banc by 34 So. 3d 1176, 2010 Miss. LEXIS 266 (Miss. 2010).

Trial court did not err in not granting an additur to plaintiff in a personal injury action against the Mississippi DOT after a vehicle that plaintiff was traveling in was struck by a rock that was thrown from a MDOT employee bushhogging along the highway because plaintiff's physician never unequivocally stated that the accident accelerated plaintiff's need to have a total knee replacement. Potts v. Miss. DOT, 3 So. 3d 810 (Miss. Ct. App. 2009).

Amount awarded by the jury to each wrongful death beneficiary on their respective claim of loss of society and companionship was not against the great weight of the evidence presented during

the second trial of the case and the jury verdict was not tainted as a result of bias, prejudice, or passion, so the beneficiaries' request to increase the jury verdict, either through altering the judgment, additur, or new trial had to be denied. Bridges v. Enter. Prods. Co., 551 F. Supp. 2d 549 (S.D. Miss. 2008).

In an injured party's negligence suit against a driver regarding an automobile accident, where the jury returned a verdict in favor of the injured party for $50,000, it was not an abuse of discretion to deny the injured party's motion for a new trial or, in the alternative, an additur, because there was substantial evidence in the record to support the jury's verdict based on, inter alia, the severity of the impact and the injured party's conduct. Dobbins v. Vann, 981 So. 2d 1041 (Miss. Ct. App. 2008).

Denial of the appellant driver's motion for an additur in her action against the appellee driver for damages stemming from an accident was proper because the jury's award was not erroneous simply because the jury did not believe that appellant sustained over $40,000 in damages as a result of her accident with appellee. Crews v. Mahaffey, 986 So. 2d 987 (Miss. Ct. App. 2007), writ of certiorari denied by 987 So. 2d 451, 2008 Miss. LEXIS 372 (Miss. 2008).

In an injured passenger's suit arising from a three-vehicle accident, by rejecting the circuit court's additur under Miss. Code Ann. § 11-1-55, the driver and the insurer effectively opted for a new trial on damages; because that new trial on damages had yet to occur, there was no final judgment, and the matter was not ripe for appellate review. Henson v. Riggenbach, 982 So. 2d 432 (Miss. Ct. App. 2007).

In a personal injury case, a trial court did not abuse its discretion in denying a motion for an additur under Miss. Code Ann. § 11-1-55 where, although it was undisputed that an injured party had a physical impairment and pain and suffering due to a fall, a property owner introduced contradictory evidence as to the amount of damages; most of the injured party's testimony had been impeached through several sources, such as other witnesses and recordings of his activities. Quinn v. President Broadwater Hotel, LLC, 963 So. 2d 1204 (Miss. Ct. App. 2007).

Because an expert in an eminent domain action had little or no knowledge as to the valuation of a business sign based on the cost approach, his testimony based on a quote from a sign company should have been stricken since he was merely acting as a conduit for hearsay about another expert's opinion, in violation of Miss. R. Evid. 703; however, additur was not an appropriate remedy in this case because the jury verdict was based on inadmissible evidence. Martin v. Miss. Transp. Comm'n, 953 So. 2d 1163 (Miss. Ct. App. 2007).

Additur was not appropriate in an eminent domain case because the damages awarded to two land owners were not contrary to the overwhelming weight of the evidence; the admissibility of an expert's opinion regarding the value of the land was waived, so the jury properly took into account the valuation evidence presented by both parties in making its decision. Martin v. Miss. Transp. Comm'n, 953 So. 2d 1163 (Miss. Ct. App. 2007).

In an action under the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C.S. §§ 621-634, where the appellate court held that the former employee was entitled to prejudgment and postjudgment interest, the appellate court also found that contrary to the employer's assertion that the former employee was entitled to 35 months of back pay, the period of entitlement was 47 months. Therefore, an additur in the latter respect was warranted, and on remand, the trial court was also to consider what additur, if any, was required to reimburse the former employee for lost insurance and vacation benefits. Cash Distrib. Co. v. Neely, 947 So. 2d 317 (Miss. Ct. App. 2006), affirmed by 947 So. 2d 286, 2007 Miss. LEXIS 23 (Miss. 2007).

Due to its failure to affirmatively accept an additur within 30 days of the trial court's order, a vehicle owner effectively acceded to a new trial limited to damages only where (1) the record revealed that the trial judge's intent was to condition the denial of a motion for a new trial upon the owner's acceptance of the additur, (2) the

record was silent as to whether the owner affirmatively accepted or rejected the additur within the requisite time period, and (3) there was no evidence in the record to suggest that the owner ever paid the judgment as ordered by the trial judge. Dedeaux v. Pellerin Laundry, Inc., 947 So. 2d 961 (Miss. Ct. App. 2005), affirmed by 947 So. 2d 900, 2007 Miss. LEXIS 14 (Miss. 2007).

In a medical malpractice case, doctors were liable for leaving a five-inch hemostat in the patient's body during surgery. The jury properly awarded damages to the patient in the amount of $ 10, 000, which exceeded the cost of the surgery to remove the hemostat; the patient was not entitled to an additur. Williams v. Gamble, 912 So. 2d 1053 (Miss. Ct. App. 2005), writ of certiorari denied by 921 So. 2d 344, 2005 Miss. LEXIS 677 (Miss. 2005).

Jury properly awarded zero damages because there was more than sufficient evidence to justify a finding that tenants had either failed to mitigate their damages, or that their purchase of a home with a long-term mortgage was not a reasonably foreseeable consequence of the property management company's negligence in telling the tenants that they would have to move from the apartment complex, or both; thus, under Miss. Code Ann. § 11-1-55, the court affirmed the trial court's order denying the tenant's post-trial motion for an additur, or alternatively, a new trial on damages. Patterson v. Liberty Assocs., L.P., 910 So. 2d 1014 (Miss. 2004).

Where decedent was killed by a tractor trailer while attempting to cross a two-lane highway, the jury found the driver of the tractor trailer and his company 30% at fault and awarded plaintiff $ 81,000. Plaintiff's motion for judgment notwithstanding the verdict on damages only or, in the alternative, for a new trial on damages, was properly denied; the jury was not confused in determining damages and liability. Wells v. Tru-Mark Grain, Inc., 895 So. 2d 181 (Miss. Ct. App. 2004).

In a property owner's trespass suit against a construction company which removed trees from his property, the trial court did not err by denying the property owner's post-trial motion for an additur because the verdict was supported by the evidence and in no way evinced bias, prejudice or passion on the part of the jury. Teasley v. Buford, 876 So. 2d 1070 (Miss. Ct. App. 2004).

In a premises liability case, while a trial court did not comply with the technical requirements of Miss. Code Ann. § 11-1-55 when it granted additur, in that it did not explicitly find that the jury's damage award was against the overwhelming weight of the evidence, it was reasonable to conclude from the trial court's order that the court nonetheless found the award inadequate for this reason, and the statute allowed the Supreme Court to make this finding. Gaines v. K-Mart Corp., 860 So. 2d 1214 (Miss. 2003).

In a trial to set value for landowners' property taken by the State, the evidence presented — including videotapes and photographs of the owners' property, plus testimony from three different experts in relevant fields — all provided substantial evidence to support the jury award to the landowners, and the trial court did not abuse its discretion in denying the landowners' motion for additur or new trial. Gautier v. Miss. Transp. Comm'n, 839 So. 2d 588 (Miss. Ct. App. 2003).

3. —Remittitur.

Evidence of the driver's fractured vertebrae, ongoing pain, and limitation of her former activities did not warrant setting aside the jury verdict as so excessive to indicate bias, passion and prejudice on the part of the jury; therefore, the trial court did not err in denying the employer a new trial or remittitur. APAC Miss., Inc. v. Johnson, 15 So. 3d 465 (Miss. Ct. App. 2009).

Motion for remittitur, under Miss. Code Ann. § 11-1-55, was properly denied because there was sufficient evidence to preclude a finding that the jury was influenced by bias, passion, and prejudice; the jury's verdict was just over eleven times the economic or special damages amount, and the patient suffered severe, recurring headaches and lived in a persistent vegetative state for almost two years. Estate of Jones v. Phillips, 992 So. 2d 1131 (Miss. 2008).

Amount awarded by the jury to each wrongful death beneficiary on their re-

spective claim of loss of society and companionship was neither contrary to the overwhelming weight of credible evidence nor contrary to right reason and there was no showing that the jury verdict was the result of bias, prejudice, or passion, so the court found that the jury verdict should not be disturbed, and that the requested remittitur should be denied. Bridges v. Enter. Prods. Co., 551 F. Supp. 2d 549 (S.D. Miss. 2008).

District court, who saw and heard witnesses and who studied and ruled on numerous motions and objections dealing with the evidence, did not abuse its discretion in deciding to deny defendant restaurant operator's new trial remittitur motion because the jury's awards were not contrary to the overwhelming weight of credible evidence. The district court properly instructed the jury on Mississippi law and applied the proper state-law standard in considering whether the verdict returned was excessive. Foradori v. Harris, 523 F.3d 477 (5th Cir. 2008).

In alienation of affection action in which the husband was granted $754,500 in damages from his wife's boyfriend, the trial court did not abuse its discretion by denying remittitur because the evidence established that the husband lost his home, physical custody of his child, his marriage and society, companionship, aid, services, support, and the child he believed and raised as his daughter; there was no evidence that the jury was influenced by bias, prejudice, or passion or that the damages were contrary to the overwhelming weight of the evidence. Fitch v. Valentine, 959 So. 2d 1012 (Miss. 2007), writ of certiorari denied by 552 U.S. 1100, 128 S. Ct. 911, 169 L. Ed. 2d 730, 2008 U.S. LEXIS 127, 76 U.S.L.W. 3345 (2008).

In a debtor's conversion action against a bank, the trial court abused its discretion in refusing to grant the bank a remittitur on compensatory damages as the compensatory damage award was against the overwhelming weight of credible evidence; the debtor's statement regarding the "rental value" of certain equipment that was taken was insufficient to support a finding of lost profits, and there was overwhelming evidence that the debtor did not own all the property at issue. Cmty. Bank v. Courtney, 884 So. 2d 767 (Miss. 2004).

In a property owner's trespass suit against a construction company which removed trees from his property, denial of the company's motion for remittitur was proper as the verdict was supported by the evidence and in no way evinced bias, prejudice or passion on the part of the jury. Teasley v. Buford, 876 So. 2d 1070 (Miss. Ct. App. 2004).

Award of compensatory damages in favor of the borrower in the borrower's action for conversion was against the overwhelming weight of credible evidence; thus, the trial court abused its discretion in refusing to grant a remittitur on compensatory damages. Cmty. Bank v. Courtney, — So. 2d —, 2004 Miss. LEXIS 656 (Miss. June 10, 2004), opinion withdrawn by, substituted opinion at, remanded by 884 So. 2d 767, 2004 Miss. LEXIS 1321 (Miss. 2004).

Remittitur was ordered in a case involving an employer's bad faith failure to pay worker's compensation benefits because the punitive damages awarded were excessive where the evidence did not show that the employer's conduct met the required degree of reprehensibility under Miss. Code Ann. § 11-1-65(1)(a). Miss. Power & Light Co. v. Cook, 832 So. 2d 474 (Miss. 2002).

§ 11-1-56. Responsive pleading to precede assignment to a judge.

Civil actions in circuit, chancery and county court shall not be assigned to a judge until at least one (1) defendant has filed a responsive pleading. However, any necessary preliminary matters may be decided by a judge on a separate rotating basis before assignment of the action to a particular judge.

SOURCES: Laws, 2002, 3rd Ex Sess, ch. 4, § 8, eff from and after Jan. 1, 2003.

JUDICIAL DECISIONS

1. Court rules.

By the adoption of Miss. Unif. Ch. Ct. R. 1.06, effective May 29, 2003, the Supreme Court of Mississippi has superseded Miss. Code Ann. § 11-1-56, exercising its inherent authority to adopt rules of practice, procedure and evidence to promote justice, uniformity, and the efficiency of the courts. In re Unif. Ch. Ct. Rules, — So. 2d —, 2003 Miss. LEXIS 252 (Miss. May 29, 2003).

§ 11-1-58. Certificate of consultation required in medical malpractice actions; exceptions.

(1) In any action against a licensed physician, health care provider or health care practitioner for injuries or wrongful death arising out of the course of medical, surgical or other professional services where expert testimony is otherwise required by law, the complaint shall be accompanied by a certificate executed by the attorney for the plaintiff declaring that:

(a) The attorney has reviewed the facts of the case and has consulted with at least one (1) expert qualified pursuant to the Mississippi Rules of Civil Procedure and the Mississippi Rules of Evidence who is qualified to give expert testimony as to standard of care or negligence and who the attorney reasonably believes is knowledgeable in the relevant issues involved in the particular action, and that the attorney has concluded on the basis of such review and consultation that there is a reasonable basis for the commencement of such action; or

(b) The attorney was unable to obtain the consultation required by paragraph (a) of this subsection because a limitation of time established by Section 15-1-36 would bar the action and that the consultation could not reasonably be obtained before such time expired. A certificate executed pursuant to this paragraph (b) shall be supplemented by a certificate of consultation pursuant to paragraph (a) or (c) within sixty (60) days after service of the complaint or the suit shall be dismissed; or

(c) The attorney was unable to obtain the consultation required by paragraph (a) of this subsection because the attorney had made at least three (3) separate good faith attempts with three (3) different experts to obtain a consultation and that none of those contacted would agree to a consultation.

(2) Where a certificate is required pursuant to this section only, a single certificate is required for an action, even if more than one (1) defendant has been named in the complaint or is subsequently named.

(3) A certificate under subsection (1) of this section is not required where the attorney intends to rely solely on either the doctrine of "res ipsa loquitur" or "informed consent." In such cases, the complaint shall be accompanied by a certificate executed by the attorney declaring that the attorney is solely relying on such doctrine and, for that reason, is not filing a certificate under subsection (1) of this section.

(4) If a request by the plaintiff for the records of the plaintiff's medical treatment by the defendants has been made and the records have not been

produced, the plaintiff shall not be required to file the certificate required by this section until ninety (90) days after the records have been produced.

(5) For purposes of this section, an attorney who submits a certificate of consultation shall not be required to disclose the identity of the consulted or the contents of the consultation; provided, however, that when the attorney makes a claim under paragraph (c) of subsection (1) of this section that he was unable to obtain the required consultation with an expert, the court, upon the request of a defendant made prior to compliance by the plaintiff with the provisions of this section, may require the attorney to divulge to the court, in camera and without any disclosure by the court to any other party, the names of physicians refusing such consultation.

(6) The provisions of this section shall not apply to a plaintiff who is not represented by an attorney.

(7) The plaintiff, in lieu of serving a certificate required by this section, may provide the defendant or defendants with expert information in the form required by the Mississippi Rules of Civil Procedure. Nothing in this section requires the disclosure of any "consulting" or nontrial expert, except as expressly stated herein.

SOURCES: Laws, 2002, 3rd Ex Sess, ch. 2, § 6, eff from and after Jan. 1, 2003.

RESEARCH REFERENCES

Law Reviews. Checking Up On the Medical Malpractice Liability Insurance Crisis in Mississippi: Are Additional Tort Reforms the Cure?, 73 Miss. L.J. 1001 (2004).

JUDICIAL DECISIONS

1. Dismissal for non-compliance proper.
1.5 Dismissal for non-compliance improper.
2. Applicability.
3. Illustrative cases.

1. Dismissal for non-compliance proper.

Although the state legislature could not promulgate statutes dictating to the judiciary what a party was required to attach to pleadings filed in court, the legislature had constitutional authority to set out pre-suit requirements such as the requirement that a litigant obtain an expert consultation prior to commencing a medical malpractice suit. Where the attorney representing the personal representative of the estate of a decedent in a wrongful death suit against a nursing care facility admitted that he did not consult an expert prior to commencing the lawsuit, the nursing care facility was entitled to a dismissal. Forest Hill Nursing Ctr. & Long Term Care Mgmt., LLC v. Brister, 992 So. 2d 1179 (Miss. 2008).

Trial court improperly denied defendant hospital and administrator's motion to dismiss the daughter's negligence action due to the daughter's failure to strictly comply with Miss. Code Ann. § 11-1-58; since the daughter obtained the mother's authorization for medical records after filing suit, she could not act on her mother's behalf. Cmty. Hosp. v. Goodlett, 968 So. 2d 391 (Miss. 2007).

Medical malpractice suit was properly dismissed for failure to state a claim because plaintiffs did comply with Miss. Code Ann. § 11-1-58 by filing with their complaint either an expert disclosure or a certificate of counsel stating that an expert disclosure had not yet been obtained because of the running of the statute of limitations under Miss. Code Ann. § 15-1-

36; strict compliance with Miss. Code Ann. § 11-1-58 was mandatory, and defendants, a medical center and the estate of a deceased doctor, which had been substituted as a defendant under Miss. R. Civ. P. 25(a)(1) after the doctor's death and reasserted the defenses raised by the doctor, had both raised as an affirmative defense plaintiffs' failure to comply with the statute. Caldwell v. N. Miss. Med. Ctr., Inc., 956 So. 2d 888 (Miss. 2007).

Trial court properly dismissed a wrongful death and negligence action filed by the administratrix of the decedent's estate against a nursing home as the administratrix failed to comply with Miss. Code Ann. § 11-1-58 by failing to timely inform the nursing home that an expert had been consulted by way of an attorney's certificate of compliance. Walker v. Whitfield Nursing Ctr., Inc., 931 So. 2d 583 (Miss. 2006).

1.5 Dismissal for non-compliance improper.

In a medical negligence action, a doctor and a medical center waived the defense of a lack of strict compliance with Miss. Code Ann. § 11-1-58 because, although both asserted the defense in their answers, they failed to further assert or pursue the defense until they filed their joint motion to dismiss nearly three years after the action was filed. Meadows v. Blake, 36 So. 3d 1225 (Miss. 2010).

Mississippi Supreme Court is unable to ignore the constitutional imperative that the Mississippi Legislature refrain from promulgating procedural statutes which require dismissal of a complaint, and, particularly, a complaint filed in full compliance with the Mississippi Rules of Civil Procedure; the requirement in Miss. Code Ann. § 11-1-58(1)(a) that a complaint be accompanied by a certificate or waiver is such a procedural statute. Thomas v. Warden, 999 So. 2d 842 (Miss. 2008).

Trial court erred in dismissing plaintiffs' medical negligence action against a physician and a hospital for failure to file with the complaint a certificate of compliance as required by Miss. Code Ann. § 11-1-58(1)(a) because the complaint did not need to be dismissed simply because plaintiffs failed to attach a certificate or waiver. Thomas v. Warden, 999 So. 2d 842 (Miss. 2008).

Medical malpractice plaintiff's failure to attach a certificate of consultation to her complaint as required by Mississippi Code Annotated section 11-1-58(1)(a) did not mandate dismissal of the cause of action because, under the separation of powers doctrine, only the statute supreme court had the authority to establish procedural rules; as such, the statute was an unconstitutional procedural statute. A medical malpractice complaint, otherwise properly filed in accordance with the Mississippi Rules of Civil Procedure, could not be dismissed and need not be amended simply because a plaintiff failed to attach a certificate of consultation. Ellis v. Miss. Baptist Med. Ctr., Inc., 997 So. 2d 996 (Miss. Ct. App. 2008).

Relative, who served her certificate of review in January 2006 before she filed suit in April 2006, satisfied the pre-suit requirements of Miss. Code Ann. § 11-1-58; in accordance with the intervening change in the law, the trial court should not have dismissed the relative's wrongful death complaint against the doctors and medical center. McClain v. Clark, 992 So. 2d 636 (Miss. 2008).

2. Applicability.

Complaint, otherwise properly filed, may not be dismissed, and need not be amended, simply because the plaintiff failed to attach a certificate or waiver; the certificate did not indicate whether the daughter's attorney consulted with the expert prior to, or after, filing the complaint; if the former, then the daughter was in compliance with the enforceable portion of § /Aa11-1-58, and if the latter, then the pretrial statutory requirement was not met, and the trial court had to dismiss the complaint with prejudice. Wimley v. Reid, 991 So. 2d 135 (Miss. 2008).

Where an employee killed co-workers after being referred to counseling by the employer and an employee assistance provider (EAP), the EAP was not entitled to summary judgment as to negligence claims because pre-suit notice and an expert certification were not required since the claims were for ordinary negligence,

not medical malpractice. Tanks v. NEAS, Inc., 519 F. Supp. 2d 645 (S.D. Miss. 2007).

3. Illustrative cases.

Where the patient filed a medical malpractice suit, contending that employees of the medical center were negligent in their examination, assessment, and care of her, proximately causing her stroke, she failed to attach a certificate of compliance to her complaint in accord with Miss. Code Ann. § 11-1-58. The patient was permitted to amend her complaint. Moore v. Delta Reg'l Med. Ctr., 23 So. 3d 541 (Miss. Ct. App. 2009), review denied by 22 So. 3d 1193, 2009 Miss. LEXIS 608 (Miss. 2009).

§ 11-1-59. Damages in medical malpractice actions.

JUDICIAL DECISIONS

1. Pleadings.

In a patient's medical malpractice suit, defendants' notice of removal was timely because (1) the patient was prohibited from including an ad damnum clause in the complaint and the facts alleged did not unequivocally establish that the plaintiff was seeking more than $ 75,000, and (2) the patient's responses constituted an "other paper" because the patient's evasive response to defendants' requests for admission, combined with the patient's manifestation of intent to seek over $ 75,000, was tantamount to a denial of defendants' requests for admission. Harden v. Field Mem. Cmty. Hosp., 516 F. Supp. 2d 600 (S.D. Miss. 2007), affirmed by 265 Fed. Appx. 405, 2008 U.S. App. LEXIS 3524 (5th Cir. Miss. 2008).

RESEARCH REFERENCES

Law Reviews. Checking Up On the Medical Malpractice Liability Insurance Crisis in Mississippi: Are Additional Tort Reforms the Cure?, 73 Miss. L.J. 1001 (2004).

§ 11-1-60. Limitation on noneconomic damages in medical malpractice actions; definitions.

(1) For the purposes of this section, the following words and phrases shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Noneconomic damages" means subjective, nonpecuniary damages arising from death, pain, suffering, inconvenience, mental anguish, worry, emotional distress, loss of society and companionship, loss of consortium, bystander injury, physical impairment, disfigurement, injury to reputation, humiliation, embarrassment, loss of the enjoyment of life, hedonic damages, other nonpecuniary damages, and any other theory of damages such as fear of loss, illness or injury. The term "noneconomic damages" shall not include punitive or exemplary damages.

(b) "Actual economic damages" means objectively verifiable pecuniary damages arising from medical expenses and medical care, rehabilitation services, custodial care, disabilities, loss of earnings and earning capacity, loss of income, burial costs, loss of use of property, costs of repair or replacement of property, costs of obtaining substitute domestic services, loss of employment, loss of business or employment opportunities, and other objectively verifiable monetary losses.

(2)(a) In any cause of action filed on or after September 1, 2004, for injury based on malpractice or breach of standard of care against a provider of health care, including institutions for the aged or infirm, in the event the trier of fact finds the defendant liable, they shall not award the plaintiff more than Five Hundred Thousand Dollars ($500,000.00) for noneconomic damages.

(b) In any civil action filed on or after September 1, 2004, other than those actions described in paragraph (a) of this subsection, in the event the trier of fact finds the defendant liable, they shall not award the plaintiff more than One Million Dollars ($1,000,000.00) for noneconomic damages.

It is the intent of this section to limit all noneconomic damages to the above.

(c) The trier of fact shall not be advised of the limitations imposed by this subsection (2) and the judge shall appropriately reduce any award of noneconomic damages that exceeds the applicable limitation.

(3) Nothing contained in subsection (1) of this section shall be construed as creating a cause of action or as setting forth elements of or types of damages that are or are not recoverable in any type of cause of action.

SOURCES: Laws, 2002, 3rd Ex Sess, ch. 2, § 7; Laws, 2004, 1st Ex. Sess., ch. 1, § 2, eff from and after September 1, 2004, and applicable to all causes of action filed on or after September 1, 2004.

Amendment Notes — The 2004 amendment, 1st Ex Sess, ch. 1, in (1)(a), inserted "disfigurement" in the first sentence, and substituted "shall not include punitive or exemplary damages" for "shall not include damages for disfigurement, nor does it include punitive or exemplary damages" in the second sentence; deleted former (1)(c), which defined "Provider of health care"; rewrote (2); and rewrote former (3) and (4) as present (3).

JUDICIAL DECISIONS

3. "Plaintiffs."
4. Erroneous directed verdict.

3. "Plaintiffs."

Miss. Code Ann. § 11-1-60(2)(a) instituted a cap on noneconomic damages recoverable by "the plaintiff," and under Miss. Code Ann. § 1-3-33, words written in the singular were to be read in the plural; therefore, a cap on noneconomic damages applied to all plaintiffs who brought a wrongful-death action pursuant to Miss. Code Ann. § 11-7-13. Estate of Klaus v. Vicksburg Healthcare, LLC, 972 So. 2d 555 (Miss. 2007).

4. Erroneous directed verdict.

Record provided evidence from which a reasonable juror could find noneconomic damages; the testimony of two expert witnesses and the employee created a question of fact for the jury with respect to pain, suffering, inconvenience, physical impairment, disfigurement, and loss of the enjoyment of life. From the evidence found in the record, as well as all reasonable inferences which could be drawn from the evidence, viewed in the light most favorable to the employee, it could not be safely said that reasonable and fair-minded jurors in the exercise of impartial judgment could have found only for the employer on the issue of noneconomic damages. Kennedy v. Ill. Cent. R.R. Co., — So. 3d —, 2010 Miss. LEXIS 14 (Miss. Jan. 7, 2010), opinion withdrawn by, substituted opinion at 30 So. 3d 333, 2010 Miss. LEXIS 130 (Miss. 2010).

Trial court erred in directing a verdict in favor of an employer in an action under the Federal Employers' Liability Act, 45 U.S.C.S. § 51 (2009), because reasonable and fair-minded jurors in the exercise of impartial judgment could have found for the employee on the issue of economic damages, as defined under Miss. Code Ann. § 11-1-60(1)(a). Kennedy v. Ill. Cent. R.R. Co., 30 So. 3d 333 (Miss. 2010).

RESEARCH REFERENCES

ALR. Exemplary or punitive damages for pharmacist's wrongful conduct in preparing or dispensing medical prescription — Cases not under Consumer Product Safety Act (15 U.S.C.A. § 2072). 109 A.L.R.5th 397.

Law Reviews. Checking Up On the Medical Malpractice Liability Insurance Crisis in Mississippi: Are Additional Tort Reforms the Cure?, 73 Miss. L.J. 1001 (2004).

Now Open for Business: The Transformation of Mississippi's Legal Climate, 24 Miss. C. L. Rev. 393, Spring, 2005.

§ 11-1-61. Expert witness in action against physician.

JUDICIAL DECISIONS

1. Conflicts with Rules of Evidence.
2. Illustrative cases.

1. Conflicts with Rules of Evidence.

Miss. Code Ann. § 11-1-61 does not conflict with the Mississippi Rules of Evidence, which govern evidentiary matters, including the qualification of expert witnesses, Miss. R. Evid. 702. Blake v. Clein, 903 So. 2d 710 (Miss. 2005).

2. Illustrative cases.

Finding in favor of the patient in his medical malpractice action was improper where the trial court erred in allowing the testimony of an orthopedic surgeon because that doctor was not qualified to testify as to the standard of care in August of 1995 since he was still in his residency in Austria and had not completed his own orthopedic training at that time. Blake v. Clein, 903 So. 2d 710 (Miss. 2005).

RESEARCH REFERENCES

ALR. Medical Negligence in Extraction of Tooth, Established Through Expert Testimony. 18 A.L.R.6th 325.

Law Reviews. Checking Up On the Medical Malpractice Liability Insurance Crisis in Mississippi: Are Additional Tort Reforms the Cure?, 73 Miss. L.J. 1001 (2004).

§ 11-1-62. Protection of medical professionals who prescribe FDA approved drugs.

In any civil action alleging damages caused by a prescription drug that has been approved by the federal Food and Drug Administration, a physician, optometrist, nurse practitioner or physician assistant may not be sued unless the plaintiff pleads specific facts which, if proven, amount to negligence on the part of the medical provider. It is the intent of this section to immunize innocent medical providers listed in this section who are not actively negligent from forum-driven lawsuits.

SOURCES: Laws, 2002, 3rd Ex Sess, ch. 2, § 3, eff from and after January 1, 2003.

RESEARCH REFERENCES

Law Reviews. Checking Up On the Medical Malpractice Liability Insurance Crisis in Mississippi: Are Additional Tort Reforms the Cure?, 73 Miss. L.J. 1001 (2004).

§ 11-1-63. Product liability actions; conditions for liability; what constitutes a defective product.

Subject to the provisions of Section 11-1-64, in any action for damages caused by a product except for commercial damage to the product itself:

(a) The manufacturer or seller of the product shall not be liable if the claimant does not prove by the preponderance of the evidence that at the time the product left the control of the manufacturer or seller:

(i)1. The product was defective because it deviated in a material way from the manufacturer's specifications or from otherwise identical units manufactured to the same manufacturing specifications, or

2. The product was defective because it failed to contain adequate warnings or instructions, or

3. The product was designed in a defective manner, or

4. The product breached an express warranty or failed to conform to other express factual representations upon which the claimant justifiably relied in electing to use the product; and

(ii) The defective condition rendered the product unreasonably dangerous to the user or consumer; and

(iii) The defective and unreasonably dangerous condition of the product proximately caused the damages for which recovery is sought.

(b) A product is not defective in design or formulation if the harm for which the claimant seeks to recover compensatory damages was caused by an inherent characteristic of the product which is a generic aspect of the product that cannot be eliminated without substantially compromising the product's usefulness or desirability and which is recognized by the ordinary person with the ordinary knowledge common to the community.

(c)(i) In any action alleging that a product is defective because it failed to contain adequate warnings or instructions pursuant to paragraph (a)(i)2 of this section, the manufacturer or seller shall not be liable if the claimant does not prove by the preponderance of the evidence that at the time the product left the control of the manufacturer or seller, the manufacturer or seller knew or in light of reasonably available knowledge should have known about the danger that caused the damage for which recovery is sought and that the ordinary user or consumer would not realize its dangerous condition.

(ii) An adequate product warning or instruction is one that a reasonably prudent person in the same or similar circumstances would have

provided with respect to the danger and that communicates sufficient information on the dangers and safe use of the product, taking into account the characteristics of, and the ordinary knowledge common to an ordinary consumer who purchases the product; or in the case of a prescription drug, medical device or other product that is intended to be used only under the supervision of a physician or other licensed professional person, taking into account the characteristics of, and the ordinary knowledge common to, a physician or other licensed professional who prescribes the drug, device or other product.

(d) In any action alleging that a product is defective pursuant to paragraph (a) of this section, the manufacturer or seller shall not be liable if the claimant (i) had knowledge of a condition of the product that was inconsistent with his safety; (ii) appreciated the danger in the condition; and (iii) deliberately and voluntarily chose to expose himself to the danger in such a manner to register assent on the continuance of the dangerous condition.

(e) In any action alleging that a product is defective pursuant to paragraph (a) (i)2 of this section, the manufacturer or seller shall not be liable if the danger posed by the product is known or is open and obvious to the user or consumer of the product, or should have been known or open and obvious to the user or consumer of the product, taking into account the characteristics of, and the ordinary knowledge common to, the persons who ordinarily use or consume the product.

(f) In any action alleging that a product is defective because of its design pursuant to paragraph (a) (i)3 of this section, the manufacturer or product seller shall not be liable if the claimant does not prove by the preponderance of the evidence that at the time the product left the control of the manufacturer or seller:

(i) The manufacturer or seller knew, or in light of reasonably available knowledge or in the exercise of reasonable care should have known, about the danger that caused the damage for which recovery is sought; and

(ii) The product failed to function as expected and there existed a feasible design alternative that would have to a reasonable probability prevented the harm. A feasible design alternative is a design that would have to a reasonable probability prevented the harm without impairing the utility, usefulness, practicality or desirability of the product to users or consumers.

(g)(i) The manufacturer of a product who is found liable for a defective product pursuant to paragraph (a) shall indemnify a product seller for the costs of litigation, any reasonable expenses, reasonable attorney's fees and any damages awarded by the trier of fact unless the seller exercised substantial control over that aspect of the design, testing, manufacture, packaging or labeling of the product that caused the harm for which recovery of damages is sought; the seller altered or modified the product, and the alteration or modification was a substantial factor in causing the

harm for which recovery of damages is sought; the seller had actual knowledge of the defective condition of the product at the time he supplied same; or the seller made an express factual representation about the aspect of the product which caused the harm for which recovery of damages is sought.

(ii) Subparagraph (i) shall not apply unless the seller has given prompt notice of the suit to the manufacturer within ninety (90) days of the service of the complaint against the seller.

(h) In any action alleging that a product is defective pursuant to paragraph (a) of this section, the seller of a product other than the manufacturer shall not be liable unless the seller exercised substantial control over that aspect of the design, testing, manufacture, packaging or labeling of the product that caused the harm for which recovery of damages is sought; or the seller altered or modified the product, and the alteration or modification was a substantial factor in causing the harm for which recovery of damages is sought; or the seller had actual or constructive knowledge of the defective condition of the product at the time he supplied the product. It is the intent of this section to immunize innocent sellers who are not actively negligent, but instead are mere conduits of a product.

(i) Nothing in this section shall be construed to eliminate any common law defense to an action for damages caused by a product.

SOURCES: Laws, 1993, ch. 302, § 1; Laws, 2002, 3rd Ex Sess, ch. 4, § 5; Laws, 2004, 1st Ex. Sess., ch. 1, § 3, eff from and after September 1, 2004, and applicable to all causes of action filed on or after September 1, 2004.

Editor's Note — Section 11-1-64, referred to in the first line of the section, was repealed by Laws of 2004, 1st Ex. Sess., ch. 1, § 7, effective September 1, 2004.

Amendment Notes — The 2002 amendment, 3rd Ex Sess, ch. 4, at the beginning of the first paragraph, added the words preceding "in any action"; in (g)(i), changed "pursuant to (a)" to "pursuant to paragraph (a)"; and in (g)(ii), replaced "within thirty (30) days of the filing" with "within ninety (90) days of the service."

The 2004 amendment, 1st Ex Sess, ch. 1, inserted (h), and redesignated former (h) as (i).

JUDICIAL DECISIONS

1. In general.

In general, a claimant must make out a prima facie products liability case in Mississippi by showing that: (1) a product is defective; (2) that the defect causes the product to be unreasonably dangerous; (3) that the unreasonably dangerous defect causes the harm complained of; and (4) that the defective condition exists at the time the product leaves the control of the manufacturer or seller. Miss. Code Ann.

Section 11-1-63(a) serves as a claimant's roadmap and provides the basic framework from which claimants classify their particular claims. Williams v. Bennett, 921 So. 2d 1269 (Miss. 2006).

"Defective condition," required under Miss. Code Ann. § 11-1-63(a)(ii), (iii), should be distinguished under the statute from a "defective product," which would be required under the first part of the statutory claim, § 11-1-63(a)(i), if the plaintiff sues under § 11-1-63(a)(i)(1), (2), or (3); the "defective condition" considered by § 11-1-63(a)(ii) and (iii) is merely the satisfaction of one of four possible elements under § 11-1-63(a)(i). Forbes v. GMC, 935 So. 2d 869 (Miss. 2006).

Summary judgment granted in favor of a manufacturer was affirmed; the individual did not prove causation as required by Miss. Code Ann. § 11-1-63(a)(iii) as he failed to establish that someone had followed the manufacturer's instructions in removing a bearing, but that the instructions were inadequate which caused the axle on his truck to snap and cause his injuries. Harris v. Int'l Truck & Engine Corp., 912 So. 2d 1101 (Miss. Ct. App. 2005).

Recusal was not merited under 28 U.S.C.S. § 455 where district court's refusal to transfer asbestos litigation to a multi-district litigation court was not motivated by the court's alleged bias against defendants in asbestos removal litigation and the merits did not favor removal as plaintiffs' claims under Miss. Code Ann. § 11-1-63 clearly permitted retailers to be sued in products liability cases even absent a showing of fault, thus making defendants' burden of demonstrating no possibility of recovery extremely difficult. Duffin v. Honeywell Int'l, Inc., — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 12856 (N.D. Miss. Apr. 26, 2004).

Plaintiff's product's liability suit against a paintball gun manufacturer was properly dismissed on summary judgment, as plaintiff (1) did not prove that the paintball gun that allegedly injured him failed to function as expected; (2) offered no feasible design alternative that would have prevented the alleged injury; (2) knew that protective eyewear was available but chose not to buy any; and (3) was an active participant in shooting paintballs at other vehicles when he allegedly was injured. Clark v. Brass Eagle, Inc., 866 So. 2d 456 (Miss. 2004).

Plain meaning of the language of the Mississippi Products Liability Act, Miss. Code Ann. § 11-1-63, is that the statute imposes liability on the manufacturer or seller for warnings that were inadequate at the time of sale, not for warnings that became inadequate at some later time. Therefore, it appears that there is no post-sale duty to warn under the statute. Palmer v. Volkswagen of Am., Inc., 905 So. 2d 564 (Miss. Ct. App. 2003), aff'd in part and rev'd in part, remanded, 904 So. 2d 1077 (Miss. 2005).

In an automobile owners' products liability action concerning an automobile fire that occurred in 1998, because the automobile manufacturer's engineer testified that in 1990 the manufacturer knew that leaves could collect in the blower box and cause smoke after contacting a resistor, it was not unreasonable for the jury to find that the leaves could also cause a fire, thereby establishing the owners' claim for design defect. Hughes v. Ford Motor Co., 204 F. Supp. 2d 958 (N.D. Miss. 2002).

1.5. Applicability.

While negligence claims can be brought alongside strict liability claims, the findings for the claims brought under the Mississippi Products Liability Act can be dispositive as to the product-based negligence claims such as negligent failure to warn and negligent design. McSwain v. Sunrise Med., Inc., — F. Supp. 2d —, 2010 U.S. Dist. LEXIS 10710 (S.D. Miss. Feb. 8, 2010).

Court rejected van manufacturer's and seller's contention that a driver's exclusive remedy was to bring an action under the Mississippi Products Liability Act (MPLA), Miss. Code Ann. § 11-1-63 et seq., finding no statutory requirement that made the MPLA the exclusive remedy for claims of malfunctioning automobiles. Additionally, breach of implied warranty claims were not barred by the MPLA. Watson Quality Ford, Inc. v. Casanova, 999 So. 2d 830 (Miss. 2008).

In a product liability case, a district court rejected the argument of a car maker and an occupant restraint maker

that the first sentence in Miss. Code Ann. § 11-1-63 stands for the proposition that the Mississippi Products Liability Act, Miss. Code Ann. § 11-1-63, is the only statutory vehicle through which one can pursue a product liability claim, thereby excluding a negligence theory. Williams v. Daimler Chrysler Corp., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 55123 (N.D. Miss. July 18, 2008), affirmed by 310 Fed. Appx. 747, 2009 U.S. App. LEXIS 5870 (5th Cir. Miss. 2009).

Mississippi courts are unified in their interpretation of the legislative mandate set forth in Miss. Code Ann. § 11-1-63, the Mississippi products liability statute. Moreover, in explicit terms, the statute requires that when a claimant asserts a design defect theory of liability, the claimant not only must provide proof that the seller knew, or in light of reasonably available knowledge or in the exercise of reasonable care should have known, about the danger causing injury, but also, the claimant must provide evidence that the product failed to function as expected by way of producing evidence of a feasible design alternative that could have reasonably prevented the claimant's injury; in the case at bar, where a handgun fell from plaintiff's car door and discharged (in part, it was undisputed that the safety was off), he failed to prove the aforementioned elements and summary judgment for defendant was proper. Williams v. Bennett, 921 So. 2d 1269 (Miss. 2006).

In a case involving a dispute over an allegedly defective roof, summary judgment was properly granted in favor of several builders because the action was untimely; Miss. Code Ann. § 11-1-63 and Miss. Code Ann. § 15-1-49 did not apply because an improvement to real property was not a product. Ferrell v. River City Roofing, Inc., 912 So. 2d 448 (Miss. 2005).

In a mass-joined asbestos action in which numerous consumers sought recovery against numerous defendants for injuries resulting from exposure to asbestos-containing products, where the consumers' complaint alleged that certain local retailers should be held liable under Mississippi law because they sold unreasonably dangerous and defective products, the complaint stated a cause of action against the retailers because Miss. Code Ann. § 11-1-63 clearly provided for strict liability against retailers in products liability cases. Duffin v. Honeywell Int'l, Inc., 312 F. Supp. 2d 869 (N.D. Miss. Apr. 5, 2004).

Grant of summary judgment in favor of the company in a wrongful death action was proper where products liability law limited itself to imposing liability on entities engaged in the actual production or sale of goods, Miss. Code Ann. § 11-1-63(a); further, the beneficiaries abandoned their motion for leave to amend because they permitted over three and on-half months to pass without making any effort to pursue a ruling on the motion in face of knowledge that the trial court had taken the summary judgment motion filed against them under advisement, Miss. Unif. Cir. & County Ct. Prac. R. 4.03(1), 2.04. Harrison v. B.F. Goodrich Co., 881 So. 2d 288 (Miss. Ct. App. 2004), cert. denied, 882 So. 2d 772 (Miss. 2004).

Trial court could not exclude material as to a warning in an owner's manual as irrelevant based upon the plaintiffs' admission that they did not rely upon any information in their owner's manual. Because reliance on the manufacturer's warning was not an element of an inadequate warnings case. Palmer v. Volkswagen of Am., Inc., 905 So. 2d 564 (Miss. Ct. App. 2003), aff'd in part and rev'd in part, remanded, 904 So. 2d 1077 (Miss. 2005).

Where a truck driver died in a single-vehicle log truck accident, and his wrongful death beneficiaries lost their suit, controlling law applied the risk-utility analysis, not consumer expectation, for determining whether a product, alleged to be defective in design, was unreasonably dangerous; as such, it was reversible error for the trial court to instruct the jury to apply the consumer expectations test. Smith v. Mack Trucks, Inc., 819 So. 2d 1258 (Miss. 2002).

Where plaintiffs alleged that they were injured by the process utilized by defendants in treating wood with creosote and by the alleged waste that process may have caused, defendants were entitled to summary judgment on plaintiff's claims for failure to warn because the process

and alleged waste was not a "product" within the scope of Miss. Code Ann. § 11-1-63. Andrews v. Kerr McGee Corp., — F. Supp. 2d —, 2001 U.S. Dist. LEXIS 25973 (N.D. Miss. Dec. 3, 2001).

2. Expert testimony.

Where the consumer complained that the vehicle-equipped air bag failed to deploy during a car accident, she filed a products liability suit against the manufacturer but failed to call expert witnesses to prove that the car was defective at the time it left the manufacturer. The circuit court did not err by granting summary judgment for the manufacturer after finding that the consumer failed to present evidence that created a genuine issue of material fact to support her claims under Miss. Code Ann. § 11-1-63(a)(i)(1)-(3). Brown v. GMC, 4 So. 3d 400 (Miss. Ct. App. 2009).

In a product liability case in which a district court had excluded a driver's expert witnesses, the driver's claims under Miss. Code Ann. § 11-1-63 failed as a matter of law since, with the exclusion of her experts, she had insufficient evidence to create a genuine issue of material fact as to her defective design, defective manufacturer, and failure to warn claims. Williams v. Daimler Chrysler Corp., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 55123 (N.D. Miss. July 18, 2008), affirmed by 310 Fed. Appx. 747, 2009 U.S. App. LEXIS 5870 (5th Cir. Miss. 2009).

Because plaintiff's expert had no expertise in tire design, manufacture, or malfunction, his testimony was properly stricken as to causation under Fed. R. Evid. 702; without the testimony of causation, plaintiff failed to establish claim under Miss. Code Ann. § 11-1-63(a) and summary judgment for the manufacturer was proper. Smith v. Goodyear Tire & Rubber Co., 495 F.3d 224 (5th Cir. 2007).

Although a driver did not offer expert testimony as to the issue of whether the collision in which she was involved was severe enough to warrant deployment of an air bag in accordance with the car manufacturer's warranty that the air bag would deploy if the collision was "hard enough," the evidence offered by the driver, including testimony from a mechanic as to the severity of the damage sustained by the car, was sufficient to allow a jury to conclude that the collision was "hard enough" such that the air bag should have deployed and that the warranty was breached, rendering the manufacturer liable under Miss. Code Ann. § 11-1-63(a)(i)(4). Forbes v. GMC, 935 So. 2d 869 (Miss. 2006).

Summary judgment in favor of defendant casket company on a product liability claim was proper because no expert testimony was presented that demonstrated that the alternative glue would have allowed the wooden casket to last for an "indefinite" period of time. Moss v. Batesville Casket Co., 935 So. 2d 393 (Miss. 2006).

In a products liability suit filed against the manufacturer of a cleaning product that exploded, the testimony of plaintiff's expert as to the cause of the explosion was excluded because it was too speculative to be reliable. Kemp v. Biolab, Inc., — F. Supp. 2d —, 2005 U.S. Dist. LEXIS 34035 (S.D. Miss. June 22, 2005).

Directed verdict in favor of the corporation in the driver's products liability action was proper pursuant to the Mississippi Products Liability Act, Miss. Code Ann. § 11-1-63, because there was no evidence that the driver or her husband relied on any express warranty or other factual representation about the air bag before the accident. Additionally, the driver offered no expert testimony to say that the air bag should have deployed in the collision. Forbes v. GMC, 929 So. 2d 958 (Miss. Ct. App. 2005), affirmed in part and reversed in part by, remanded by 935 So. 2d 869, 2006 Miss. LEXIS 285 (Miss. 2006).

Directed verdict for defendant under Miss. R. Civ. P. 50(a) was proper in a products liability action under Miss. Code Ann. § 11-1-63 where a wife was injured in an automobile accident and there was evidence that her air bag did not deploy because the only express warranty made was that the automobile had air bags, there was no evidence that plaintiffs justifiably relied on statements in the owners' manual, and plaintiffs offered no expert testimony to show that the impact was hard enough that the air bag should have deployed. Forbes v. GMC, — So. 2d

—, 2005 Miss. App. LEXIS 95 (Miss. Ct. App. Feb. 1, 2005), opinion withdrawn by, substituted opinion at, modified by 929 So. 2d 958, 2005 Miss. App. LEXIS 716 (Miss. Ct. App. 2005).

Trial court erred in allowing auto manufacturer's expert to provide lay testimony about air bag inflation technology court because the manufacturer failed to designate him as an expert before the deadline, and his "lay testimony" strayed into the realm of scientific, technical and specialized knowledge that could only be admitted as expert testimony after assessment pursuant to Miss. R. Evid. 702. Also the injured driver's family members were prejudiced by the expert's testimony as it rebutted their expert's testimony regarding their claim of defective design under the Mississippi Product Liability Act, Miss. Code Ann. § 11-1-63. Palmer v. Volkswagen of Am., Inc., — So. 2d —, 2005 Miss. LEXIS 21 (Miss. Jan. 13, 2005), opinion withdrawn by, substituted opinion at, remanded in part by 904 So. 2d 1077, 2005 Miss. LEXIS 247 (Miss. 2005).

3. Tobacco products.

Miss. Code Ann. § 11-1-63 was commonly referred to as the inherent characteristics defense and was just that; a defense that had to be pled and proven, rather than an outright bar, and the defense in Miss. Code Ann. § 11-1-63(b) did not bar any action for damages caused by cigarettes, as the defense only applied to a products liability action and, as with any other affirmative defense, the defense was a matter of proof. R. J. Reynolds Tobacco Co. v. King, 921 So. 2d 268 (Miss. 2005).

Mississippi Product Liability Act, Miss. Code Ann. § 11-1-63, precludes all tobacco cases based on products liability against tobacco companies; hence, summary judgment was properly granted to tobacco companies on an asbestos company's claim that smoking by asbestos claimants had caused the damage to the asbestos claimants. Owens Corning v. R.J. Reynolds Tobacco Co., 868 So. 2d 331 (Miss. 2004).

Miss. Code Ann. § 11-1-63 precludes all product liability actions against tobacco companies; the harm from tobacco use has been well documented, and elimination of the sources of the harm would greatly reduce the desirability of cigarettes. Lane v. R. J. Reynolds Tobacco Co., 853 So. 2d 1144 (Miss. 2003).

5. Adequate warnings.

Mississippi law does not require the best and most obvious warning but only adequate warning. McSwain v. Sunrise Med., Inc., — F. Supp. 2d —, 2010 U.S. Dist. LEXIS 10710 (S.D. Miss. Feb. 8, 2010).

Warning may be held adequate as a matter of law where the adverse effect was one that the manufacturer specifically warned against. The presence or absence of anything in an unread owner's manual simply cannot proximately cause a plaintiff's damages. McSwain v. Sunrise Med., Inc., — F. Supp. 2d —, 2010 U.S. Dist. LEXIS 10710 (S.D. Miss. Feb. 8, 2010).

Warning was adequate as it not only warned of the potential of rear tip over, but also provided explicit directions on how to avoid the possibility of rear tip over. Further, the purchaser could not prove that the manual's inadequate warnings proximately caused his injury as he voluntarily made the decision to not read the manual. McSwain v. Sunrise Med., Inc., — F. Supp. 2d —, 2010 U.S. Dist. LEXIS 10710 (S.D. Miss. Feb. 8, 2010).

In plaintiffs' suit for injuries caused by exposure to lead paint used in an apartment building over the course of 70 years, the manufacturer was granted summary judgment as to plaintiffs' post-sale failure to warn claims because Miss. Code. Ann. § 11-1-63 did not impose such a duty; however, fact issues remained as to the product's defectiveness, causation, and damages based on measurable diminution of plaintiffs' mental abilities. Jones v. NL Indus., — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 33714 (N.D. Miss. May 24, 2006).

With regard to a product liability claim under Miss. Code Ann. § 11-1-63(a)(i)(4), it is possible to rely on assertions in an ownership manual without having actually read them; thus, in a driver's breach of warranty suit against a car manufacturer, although the driver had not read the owner's manual prior to purchasing a car, the driver could show that she relied on a warranty in the ownership manual concerning air bags where the salesman

conveyed that information to the driver prior to her purchase of the car. Forbes v. GMC, 935 So. 2d 869 (Miss. 2006).

Parents of a minor girl who died as a result of injuries sustained in a car crash when the air bags deployed did not have a valid argument that the warnings in the owner's manual for the car were inadequate. The parents and the daughters admittedly had not even read the owner's manual in which the warnings were found. Palmer v. Volkswagen of Am., Inc., 904 So. 2d 1077 (Miss. 2005).

Creating a post-sale duty to warn appeared to conflict with the language of Miss. Code Ann. § 11-1-63(a)(1) and the appellate court declined to create such a post-sale duty to warn. Even had defendants been aware of allegations of brake failure, they were under no duty to disclose them, and under the circumstances, where among the reports in the record, only two dealt with complaints of similar brake failures prior to the time the vehicle was purchased, admission of the prior incident reports occurring after the date of sale would have been more prejudicial than probative. Noah v. GMC, 882 So. 2d 235 (Miss. Ct. App. 2004), cert. denied, 882 So. 2d 772 (Miss. 2004).

Summary judgment dismissal of wrongful death claims based on failure to warn and defective design was affirmed, where the decedent was electrocuted after raising a broadcast antenna mast into a power line. Austin v. Will-Burt Co., 361 F.3d 862 (5th Cir. 2004).

As defendant, the manufacturer of a liner installed in a lagoon where a worker drowned, gave a sufficient warning of the dangers of the liner in its contract with the general contractor. The dangerous nature of the liner that it became slippery when wet, also would have been known to the ordinary user; therefore, the trial court properly granted the manufacturer summary judgment on grounds that plaintiff failed to prove the manufacturer breached a duty to the deceased worker. Hobson v. Waggoner Eng'g, Inc., 878 So. 2d 68 (Miss. Ct. App. 2003), cert. denied, 878 So. 2d 66 (Miss. 2004).

Manufacturer's telescoping mast was not defectively designed nor unreasonably dangerous when it left the manufacturer's control; it performed without incident for years and was labeled with adequate warnings pursuant to Miss. Code Ann. § 11-1-63 and the relatives' suit was dismissed. Austin v. Will-Burt Co., 232 F. Supp. 2d 682 (N.D. Miss. 2002), aff'd, 361 F.3d 862 (5th Cir. 2004).

In workers' suit against manufacturers and suppliers of asbestos-containing products, remand to state court was warranted because the in-state defendants were not fraudulently joined; the complaint contained allegations that could create liability for the in-state defendants which were allegedly responsible for selling defective products that caused injury to the workers. Arrington v. AC & S, Inc., — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 27636 (S.D. Miss. Aug. 27, 2002).

Non-diverse pharmacies were fraudulently joined in the patients' negligence, fraud, and failure to warn action for damages based on injuries caused by the diverse manufacturers' diet drugs because, in the face of the specific allegations of the manufacturers' concerted, unabated fraud and concealment of the drugs' true risks from virtually everyone, no factual basis could have been drawn for the general, conclusory charge that the pharmacies knew or had reason to know of the risks. Louis v. Wyeth-Ayerst Pharms., Inc., — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 22694 (S.D. Miss. Sept. 25, 2000).

5.1 Design defect.

Purchaser immediately noticed that the wheelchair did not include anti-tip tubes; he and his son immediately tried to install the tubes from his old chair onto his new one because the purchaser recognized that he needed them. Despite his recognition that the chair did not have the safety feature he needed, the purchaser voluntarily decided to ride around in it; therefore, the purchaser assumed the risk of using a chair without anti-tip tubes as a matter of law. McSwain v. Sunrise Med., Inc., — F. Supp. 2d —, 2010 U.S. Dist. LEXIS 10710 (S.D. Miss. Feb. 8, 2010).

Grant of summary judgment against the father in his action against the manufacturer and seller under theories of strict liability and negligence, alleging a design defect in a garage door opener and a failure to warn, was proper pursuant to

Miss. Code Ann. § 11-1-63(f)(ii) where the manufacturer designed its garage door opener to raise and lower the door when someone physically activated the device. It did not design the opener to open unless someone manually operated it and thus, the father failed to show that the product failed to function as expected. Glenn v. Overhead Door Corp., 935 So. 2d 1074 (Miss. Ct. App. 2006), writ of certiorari dismissed by 936 So. 2d 367, 2006 Miss. LEXIS 434 (Miss. 2006).

5.5. — Open and obvious danger.

Grant of summary judgment in favor of the employer and manufacturer in the employee's personal-injury action was proper because the employee needed no warning to understand the danger of coming into close proximity with the moving chains attached to a mule boy; he appreciated that it was a dangerous situation but did not turn off the machine. Green v. Allendale Planting Co., 954 So. 2d 1032 (Miss. 2007).

Trial court properly allowed a car manufacturer to present evidence that the danger of air bags opening were open and obvious to rebut the plaintiffs' inadequate warning claim. Palmer v. Volkswagen of Am., Inc., 905 So. 2d 564 (Miss. Ct. App. 2003), aff'd in part and rev'd in part, remanded, 904 So. 2d 1077 (Miss. 2005).

6. Feasible design alternative.

District court properly granted judgment as a matter of law to the corporation on the employee's design defect claim under the Mississippi Products Liability Act (MPLA), Miss. Code Ann. § 11-1-63 et seq., because the employee did not present the requisite evidence for a reasonable jury to find that a door was a MPLA feasible design alternative, and the employee's only witness testifying about the forklift design, presented no opinion, however, that a door would be a MPLA feasible design alternative. Therefore, the evidence produced by the employee was not sufficient for a reasonable jury to find that the corporation's forklift had a design defect that rendered the forklift unreasonably dangerous. Guy v. Crown Equip. Corp., 394 F.3d 320 (5th Cir. 2004).

7. Prima facie case.

In a driver's product liability suit pursuant to Miss. Code Ann. § 11-1-63(a)(i)(4), a circuit court erred in granting a directed verdict to a manufacturer; the driver set forth a prima facie case for breach of warranty where the driver introduced evidence tending to show that, inter alia: (1) the owner's manual for the manufacturer's car stated that the air bag would deploy if the collision were "hard enough"; (2) the driver relied on that warranty, which had been conveyed by a salesman prior to the driver's purchase of the car; (3) and where the collision was severe and was "hard enough" to warrant deployment of the air bag. Forbes v. GMC, 935 So. 2d 869 (Miss. 2006).

While foreseeability is an element of proof required by Miss. Code Ann. § 11-1-63, a claimant must also offer a feasible design alternative. In the case at bar, fundamental to proving his prima facie case was plaintiff's burden of proving that: (1) the handgun (which fired when it was dropped), was unreasonably dangerous by showing that the product seller knew or should have known about the unreasonably dangerous condition of the handgun; (2) that the handgun failed to function as expected, and; (3) that there existed a feasible design alternative that would have, to a reasonable probability, prevented the harm complained of by plaintiff. Williams v. Bennett, 921 So. 2d 1269 (Miss. 2006).

In a products liability case alleging a manufacturing defect, plaintiff bears the burden of persuasion as to the issue of proximate cause. Plaintiff's failure to produce any evidence from which a reasonable juror could conclude that the claimed manufacturing defects proximately caused her accident is insurmountable. Johnson v. Davidson Ladders, Inc., 403 F. Supp. 2d 544 (N.D. Miss. 2005), affirmed by 193 Fed. Appx. 349, 2006 U.S. App. LEXIS 20526 (5th Cir. Miss. 2006).

Manufacturer of a cleaning product that exploded was entitled to summary judgment in the user's action for products liability. The user failed to establish a material fact question on inadequate warning and proximate cause. Kemp v. Biolab, Inc., — F. Supp. 2d —, 2005 U.S. Dist. LEXIS 34035 (S.D. Miss. June 22, 2005).

Manufacturer was entitled to a motion for a judgment notwithstanding the ver-

dicts, pursuant to Miss. Code. Ann. § 11-1-63, because the asbestos injury claimants failed to meet their burden of proof of showing that a dust mask and respirator were defective when made by the manufacturer, or that a required warning by the manufacturer was missing. 3M Co. v. Johnson, 895 So. 2d 151 (Miss. 2005).

Passengers' suit against a car dealer was subject to remand because the passengers' allegations—that the dealer sold a vehicle that was unreasonably dangerous, was defectively designed, and failed to contain adequate warnings—were sufficient to potentially state a cause of action for products liability against the dealer in state court. Thus, the dealer's citizenship, which destroyed complete diversity, could not be ignored for purposes of determining subject matter jurisdiction under 28 U.S.C.S. § 1332. Stanton v. Ford Motor Co., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 26554 (N.D. Miss. June 30, 2003), remanded by 2003 U.S. Dist. LEXIS 25157 (N.D. Miss. July 2, 2003).

Where the consumer alleged that the seller sold the consumer an all-terrain vehicle that was unreasonably dangerous, was defectively designed, and failed to contain adequate warnings, these allegations were sufficient to potentially state a cause of action for products liability against the seller under Miss. Code Ann. § 11-1-63. Jackson v. Kawasaki Motors Corp., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 26291 (N.D. Miss. Mar. 26, 2003).

Where there was at least one viable state-law claim with a possibility of recovery against the resident retail sellers with respect to the strict liability claim under Miss. Code Ann. § 11-1-63, joinder of the diabetics' claims was proper under Miss. R. Civ. P. 20; therefore, the the case was erroneously removed pursuant to 28 U.S.C.S. § 1332 and had to be remanded to the state court. Polk v. Lifescan, Inc., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 25762 (N.D. Miss. Sept. 19, 2003).

In a products liability action by minor passengers against the manufacturer and the seller of a vehicle for the injuries the passengers suffered in a one-vehicle accident, the passengers were entitled to have their case remanded to state court under 28 U.S.C.S. § 1447(c) after defendants removed it to federal court under 28 U.S.C.S. § 1441(a) on a claim that the passengers had fraudulently joined the seller as a defendant in order to defeat diversity jurisdiction under 28 U.S.C.S. § 1332(a), where the passengers stated a cause of action under Miss. Code Ann. § 11-1-63 by alleging that the seller sold a defective and unreasonably dangerous vehicle that caused the passengers' injuries. Stanton ex rel. Stanton v. Ford Motor Co., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 25157 (N.D. Miss. July 2, 2003).

Where the injured party asserted a products liability action pursuant to Miss. Code Ann. § 11-1-63 alleging that the manufacturer's defective water heater had caused the injured party's burns, the manufacturer was entitled to summary judgment under Miss. R. Civ. P. 56; the injured party was unable to show that the manufacturer's hot water heater had caused the injured party's burns, because the hot water heater had to comply with all mandatory and voluntary government and industry standards, and housing and urban development inspected the water heater after the incident and found nothing wrong. Moore v. Miss. Valley Gas Co., 863 So. 2d 43 (Miss. 2003).

As a wrongful death plaintiff failed to prove that defendant — the manufacturer of a liner installed in a lagoon where a worker drowned — defectively designed the liner, having presented no evidence of industry standards or customs and no expert opinion showing the availablity of an alternate design that would have prevented the alleged harm without impairing the usefulness of the product, the trial court properly granted the manufacturer summary judgment. Hobson v. Waggoner Eng'g, Inc., 878 So. 2d 68 (Miss. Ct. App. 2003), cert. denied, 878 So. 2d 66 (Miss. 2004).

7.5. Evidence.

Grant of summary judgment in favor of a window manufacturer and seller in the homeowners' action against them concerning leaking windows was appropriate because the homeowners offered only mere proof of damage following the use of the windows, which was insufficient under Miss. Code Ann. § 11-1-63(a), (b), and (f). The fact that their windows leaked and

rotted was insufficient for the design-defect claim to survive the motion for summary judgment. McKee v. Bowers Window & Door Co., 64 So. 3d 926 (Miss. 2011).

Per the plain language of the Mississippi Products Liability Act, Miss. Code Ann. § 11-1-63(c)(i) (2004), critical to the district court's inquiry into a failure-to-warn claim was the question of what the manufacturers knew and what knowledge was reasonably available to them and as knowledge accumulates over time, prior knowledge of harm that predated plaintiffs' employment was relevant to a question of current knowledge; evidence that some members of the welding industry had warnings on their products as far back as the 1940s, which were later removed due to concerns about the financial implications of such warnings, was directly relevant to rebut testimony. Accordingly, given the relevance of these documents to plaintiffs' failure-to-warn claim under Mississippi law, the district court did not abuse its discretion in admitting them over the manufacturers' objection. Jowers v. Lincoln Elec. Co., 617 F.3d 346 (5th Cir. 2010).

Trial court did not err in granting a manufacturer and an automobile dealership summary judgment in a breach of warranty action filed by a driver and her husband because they produced insufficient evidence of causation pursuant to Miss. Code Ann. § 11-1-63(a); there had to be proof from which a jury could conclude that the vehicle's airbag would have prevented the driver's injuries, but there was no evidence from which a reasonable jury could conclude that but for the breach of warranty, the driver would not have been injured or her injuries would have been mitigated, Rowan v. Kia Motors Am., 16 So. 3d 62 (Miss. Ct. App. 2009).

Former police officer's recollection of being told that it was "extremely hard" to grab a weapon from a certain model holster corresponded closely to the "extremely difficult" language used in defendants' advertisement. The officer's testimony regarding the holster's reputation for weapon retention suggested that representations regarding that quality were at least part of what made him purchase it, Miss. Code. Ann. § 11-1-63(a)(1)(4). Johnson v. Michaels of Or. Co., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 17870 (N.D. Miss. Feb. 23, 2009).

Because a product liability action established by Miss. Code Ann. § 11-1-63 was subject to a comparative fault defense, evidence of plaintiff's alcohol and drug use before riding an all-terrain vehicle (ATV), even though he was not legally intoxicated when he was hurt in an ATV accident, was not subject to exclusion on a motion in limine because it was relevant to the issue of contributory negligence under Miss. Code Ann. § 11-7-15. Fife v. Polaris Indus., Inc., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 9882 (S.D. Miss. Jan. 15, 2008).

8. Jury instruction.

Because the jury was instructed pursuant to the Mississippi Products Liability Act, Miss. Code Ann. § 11-1-63, the trial court did not need to present the jury with a separate negligence instruction on inadequate warnings. Palmer v. Volkswagen of Am., Inc., 905 So. 2d 564 (Miss. Ct. App. 2003), aff'd in part and rev'd in part, remanded, 904 So. 2d 1077 (Miss. 2005).

9. Asbestos cases.

In asbestos litigation in Mississippi, the proper test to be used is the frequency, regularity, and proximity standard to show product identification of the defendants' actual products, exposure of the plaintiffs to those products, and proximate causation as to the injuries suffered by the plaintiffs. In the case at bar, the workers fell well short of meeting the Lohrmann test as adopted by the Mississippi Supreme Court in Gorman-Rupp Co. v. Hall, 908 So.2d 749 (Miss. 2005); for those reasons, the supreme court reversed the circuit court's denial of summary judgment and rendered judgment in favor of the chemical company. Monsanto Co. v. Hall, 912 So. 2d 134 (Miss. 2005).

10. Reliance.

Purchaser did not present any evidence that the manufacturers made an express representation to him about the wheelchair, or any evidence that the purchaser relied on any information from the manufacturer at all; indeed, there was no evidence that the manufacturers had any

interaction with the purchaser at all since the seller handled the sale. Therefore there was no factual or legal basis for a breach of an express warranty claim under the Mississippi Products Liability Act. McSwain v. Sunrise Med., Inc., — F. Supp. 2d —, 2010 U.S. Dist. LEXIS 10710 (S.D. Miss. Feb. 8, 2010).

In a personal injury products liability lawsuit, the tire maker argued that the decedent's estate failed to prove that there was a manufacturing defect in the tire when it left the control of the maker or the seller; the maker claimed that the estate failed to show any actual deviation in the tire from the manufacturer's specifications. However, the theory on which the case went to the jury was not that of a manufacturing-defect theory, but instead it was that the tire breached an express warranty or failed to conform to other express factual representations upon which the decedent justifiably relied in using the product pursuant to Mississippi Code Annotated section 11-1-63(a)(i)(4); therefore, there was no merit to the assignment of error. Goodyear Tire & Rubber Co. v. Kirby, 2009 Miss. App. LEXIS 221 (Miss. Ct. App. Apr. 21, 2009), appeal dismissed by, writ of certiorari dismissed by 36 So. 3d 455, 2010 Miss. LEXIS 327 (Miss. 2010).

11. Preservation for review.

Grant of summary judgment in favor of a window manufacturer and seller in the homeowners' action against them concerning leaking windows was appropriate because the homeowners' warranty claims were procedurally barred. The homeowners never, over the course of filing three complaints, pleaded claims for breach of implied or express warranty against the seller and that critical fact fundamentally distinguished the case from the warranty decisions relied upon by the homeowners. McKee v. Bowers Window & Door Co., 64 So. 3d 926 (Miss. 2011).

12. Proximate cause.

Summary judgment was granted to a manufacturer in a product liability case under Miss. Code Ann. § 11-1-63 due to a lack of proximate causation; neither the manufacturer's failure to warn nor its alleged design defect proximately caused a renter's eye injuries from a bungee cord. The renter's awareness of the allegedly dangerous condition was fatal to a failure-to-warn claim; as to a design-defect claim, there was testimony that the renter would have attempted to restrain a machine's movement, even if the wheels of the machine had been locked. Berry v. E-Z Trench Mfg., — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 15940 (S.D. Miss. Feb. 16, 2011).

13. Innocent seller.

Mother's motion to amend her complaint under Fed. R. Civ. P. 60 to add a medical retail store as a defendant in her action seeking damages for her son's injury in a wheelchair was denied because the mother voluntarily dismissed the store under Fed. R. Civ. P. 41(a)(2), the statute of limitations of Miss. Code Ann. § 15-1-49 had expired, and the court failed to perceive any legitimate basis for the mother's insistence that she was duped into believing that she had purchased the wheelchair by the "innocent seller" arguments of the store and the wheelchair's manufacturer under Miss. Code Ann. § 11-1-63. Braswell v. Invacare Corp., — F. Supp. 2d —, 2010 U.S. Dist. LEXIS 140025 (S.D. Miss. Oct. 21, 2010).

RESEARCH REFERENCES

Law Reviews. Now Open for Business: The Transformation of Mississippi's Legal Climate, 24 Miss. C. L. Rev. 393, Spring, 2005.

Taming an Elephant: A Closer Look at Mass Tort Screening and the Impact of Mississippi Tort Reforms, 26 Miss. C. L. Rev. 253, 2006/2007.

§ 11-1-64. Repealed.

Repealed by Laws, 2004 1st ex. Sess. ch. 1, § 7, eff September 1, 2004, and applicable to all causes of action filed on or after September 1, 2004.

[Laws, 2002, 3rd Ex Sess, ch. 4, § 4, eff from and after Jan. 1, 2003.]

Editor's Note — Former § 11-1-64 provided the procedure for dismissing a defendant whose liability is based solely on his status as a seller in the stream of commerce.

JUDICIAL DECISIONS

Miss. Code Ann. § 11-1-64 (repealed 2004) sets forth certain procedures for state courts to follow in considering motions by retailers to dismiss, and while those procedures are not applicable in federal court, a federal court is not precluded from looking at the substance of whether any reasonable possibility of recovery exists against retailers under Mississippi law, and because a federal court's retaining jurisdiction over a case against a retailer clearly required the absence of the retailer because it was a non-diverse, the retailer's motion to dismiss was granted. Lott v. Chickasaw Equip. Co., 352 F. Supp. 2d 749 (N.D. Miss. Jan. 11, 2005).

RESEARCH REFERENCES

Law Reviews. Now Open for Business: The Transformation of Mississippi's Legal Climate, 24 Miss. C. L. Rev. 393, Spring, 2005.

Taming an Elephant: A Closer Look at Mass Tort Screening and the Impact of Mississippi Tort Reforms, 26 Miss. C. L. Rev. 253, 2006/2007.

§ 11-1-65. Punitive damages; limitations.

(1) In any action in which punitive damages are sought:

(a) Punitive damages may not be awarded if the claimant does not prove by clear and convincing evidence that the defendant against whom punitive damages are sought acted with actual malice, gross negligence which evidences a willful, wanton or reckless disregard for the safety of others, or committed actual fraud.

(b) In any action in which the claimant seeks an award of punitive damages, the trier of fact shall first determine whether compensatory damages are to be awarded and in what amount, before addressing any issues related to punitive damages.

(c) If, but only if, an award of compensatory damages has been made against a party, the court shall promptly commence an evidentiary hearing to determine whether punitive damages may be considered by the same trier of fact.

(d) The court shall determine whether the issue of punitive damages may be submitted to the trier of fact; and, if so, the trier of fact shall determine whether to award punitive damages and in what amount.

(e) In all cases involving an award of punitive damages, the fact finder, in determining the amount of punitive damages, shall consider, to the extent relevant, the following: the defendant's financial condition and net worth; the nature and reprehensibility of the defendant's wrongdoing, for example, the impact of the defendant's conduct on the plaintiff, or the relationship of the defendant to the plaintiff; the defendant's awareness of the amount of harm being caused and the defendant's motivation in causing such harm; the

duration of the defendant's misconduct and whether the defendant attempted to conceal such misconduct; and any other circumstances shown by the evidence that bear on determining a proper amount of punitive damages. The trier of fact shall be instructed that the primary purpose of punitive damages is to punish the wrongdoer and deter similar misconduct in the future by the defendant and others while the purpose of compensatory damages is to make the plaintiff whole.

(f)(i) Before entering judgment for an award of punitive damages the trial court shall ascertain that the award is reasonable in its amount and rationally related to the purpose to punish what occurred giving rise to the award and to deter its repetition by the defendant and others.

(ii) In determining whether the award is excessive, the court shall take into consideration the following factors:

1. Whether there is a reasonable relationship between the punitive damage award and the harm likely to result from the defendant's conduct as well as the harm that actually occurred;

2. The degree of reprehensibility of the defendant's conduct, the duration of that conduct, the defendant's awareness, any concealment, and the existence and frequency of similar past conduct;

3. The financial condition and net worth of the defendant; and

4. In mitigation, the imposition of criminal sanctions on the defendant for its conduct and the existence of other civil awards against the defendant for the same conduct.

(2) The seller of a product other than the manufacturer shall not be liable for punitive damages unless the seller exercised substantial control over that aspect of the design, testing, manufacture, packaging or labeling of the product that caused the harm for which recovery of damages is sought; the seller altered or modified the product, and the alteration or modification was a substantial factor in causing the harm for which recovery of damages is sought; the seller had actual knowledge of the defective condition of the product at the time he supplied same.

(3)(a) In any civil action where an entitlement to punitive damages shall have been established under applicable laws, no award of punitive damages shall exceed the following:

(i) Twenty Million Dollars ($20,000,000.00) for a defendant with a net worth of more than One Billion Dollars ($1,000,000,000.00);

(ii) Fifteen Million Dollars ($15,000,000.00) for a defendant with a net worth of more than Seven Hundred Fifty Million Dollars ($750,000,000.00) but not more than One Billion Dollars ($1,000,000,000.00);

(iii) Five Million Dollars ($5,000,000.00) for a defendant with a net worth of more than Five Hundred Million Dollars ($500,000,000.00) but not more than Seven Hundred Fifty Million Dollars ($750,000,000.00);

(iv) Three Million Seven Hundred Fifty Thousand Dollars ($3,750,000.00) for a defendant with a net worth of more than One Hundred Million Dollars ($100,000,000.00) but not more than Five Hundred Million Dollars ($500,000,000.00);

(v) Two Million Five Hundred Thousand Dollars ($2,500,000.00) for a defendant with a net worth of more than Fifty Million Dollars ($50,000,000.00) but not more than One Hundred Million Dollars ($100,000,000.00); or

(vi) Two percent (2%) of the defendant's net worth for a defendant with a net worth of Fifty Million Dollars ($50,000,000.00) or less.

(b) For the purposes of determining the defendant's net worth in paragraph (a), the amount of the net worth shall be determined in accordance with Generally Accepted Accounting Principles.

(c) The limitation on the amount of punitive damages imposed by this subsection (3) shall not be disclosed to the trier of fact, but shall be applied by the court to any punitive damages verdict.

(d) The limitation on the amount of punitive damages imposed by this subsection (3) shall not apply to actions brought for damages or an injury resulting from an act or failure to act by the defendant:

(i) If the defendant was convicted of a felony under the laws of this state or under federal law which caused the damages or injury; or

(ii) While the defendant was under the influence of alcohol or under the influence of drugs other than lawfully prescribed drugs administered in accordance with a prescription.

(4) Nothing in this section shall be construed as creating a right to an award of punitive damages or to limit the duty of the court, or the appellate courts, to scrutinize all punitive damage awards, ensure that all punitive damage awards comply with applicable procedural, evidentiary and constitutional requirements, and to order remittitur where appropriate.

SOURCES: Laws, 1993, ch. 302, § 2; Laws, 2002, 3rd Ex Sess, ch. 4, § 6; Laws, 2004, 1st Ex. Sess., ch. 1, § 4, eff from and after September 1, 2004, and applicable to all causes of action filed on or after September 1, 2004.

Amendment Notes — The 2002 amendment, 3rd Ex Sess, ch. 4, redesignated (g) as (2); inserted (3) and (4); and redesignated former (2) as (5) and made stylistic changes in (5).

The 2004 amendment, 1st Ex Sess, ch. 1, made a stylistic change in (1)(c); deleted "or the seller made an express factual representation about the aspect of the product which caused the harm for which recovery of damages is sought" at the end of (2); substituted "Five Million Dollars ($5,000,000.00)" for "Ten Million Dollars ($10,000,000.00)" in (3)(a)(iii); substituted "Three Million Seven Hundred Fifty Thousand Dollars ($3,750,000.00)" for "Seven Million Five Hundred Thousand Dollars ($7,500,000.00)" in (3)(a)(iv); substituted "Two Million Five Hundred Thousand Dollars ($2,500,000.00)" for "Five Million Dollars ($5,000,000.00)" in (3)(a)(v); substituted "Two percent (2%)" for "Four percent (4%)" in (3)(a)(vi); deleted (3)(d), which read "The exceptions provided in paragraph (d) shall not apply to an employer of a person acting outside the scope of such person's employment or responsibility as an agent or employee"; and deleted (5), which provided that subsections (1) and (2) did not apply to contracts, libel and slander, or asbestos actions.

JUDICIAL DECISIONS

1. In general.
2. Breach of contract.
3. Torts.
4. Availability.
5. Bifurcated trials.
6. Bifurcated claims.
7. Burden of proof.

1. In general.

Bankruptcy court refused to reconsider its ruling that a judgment an injured party obtained in a Mississippi court was nondischargeable under 11 U.S.C.S. § 523(a)(6) because the debtor committed a willful and malicious injury when he assaulted the injured party, or to review the state court's judgment awarding actual and punitive damages. Under the Rooker-Feldman doctrine, the question of whether the state court incorrectly assessed damages had to be answered by the state court, and while the judgment entered by the state court appeared to be inconsistent with Miss. Code Ann. § 11-1-65, insofar as the award of punitive damages was concerned, it was not void under Mississippi law and was not subject to collateral attack in the bankruptcy court. Montgomery v. Canerdy (In re Canerdy), — Bankr. —, 2010 Bankr. LEXIS 2230 (Bankr. N.D. Miss. Apr. 28, 2010).

Award of punitive damages was appropriate under Miss. Code Ann. § 11-1-65(1)(a) because the jury returned a verdict finding that the appellee daughter had misappropriated her mother's assets and the record before the appellate court supported the findings of the jury and the chancellor. Ultimately, the decision to award punitive damages was within the discretion of the chancellor as fact-finder, and there was no error with that decision. DeMoville v. Johnson (In re DeMoville P'ship), 26 So. 3d 366 (Miss. Ct. App. 2009), writ of certiorari denied by 24 So. 3d 1038, 2010 Miss. LEXIS 37 (Miss. 2010), writ of certiorari denied by 2010 Miss. LEXIS 32 (Miss. Jan. 28, 2010).

In an insurance dispute involving a bad faith claim, an insurer's motion to bifurcate the compensatory and punitive damages phases of trial was granted because it was consistent with the provisions of Miss. Code. Ann. § 11-1-65. Simpson v. Econ. Premier Assur. Co., — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 64603 (N.D. Miss. Sept. 8, 2006).

In an insurance dispute involving a bad faith claim, an insurer's motion to prohibit the admission of evidence of its net worth was granted as to the compensatory damages phase of the bifurcated trial, but Miss. Code. Ann. § 11-1-65 required that the trier of fact consider such evidence at the punitive damages stage of trial. Simpson v. Econ. Premier Assur. Co., — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 64603 (N.D. Miss. Sept. 8, 2006).

If the jury awards compensatory damages, then an evidentiary hearing is conducted in the presence of the jury; therefore, in a contract case, a circuit court erred when it failed to conduct an evidentiary hearing on the issue of punitive damages under Miss. Code Ann. § 11-1-65. Bradfield v. Schwartz, 936 So. 2d 931 (Miss. 2006).

Trial court erred when it failed to conduct an evidentiary hearing on the issue of punitive damages pursuant to the statutory mandates of Miss. Code Ann. § 11-1-65(1)(c), which expressly provided that if a properly instructed jury returned a verdict for compensatory damages against a party, the trial court "shall promptly commence an evidentiary hearing before the same trier of fact to determine whether punitive damages may be considered." Bradfield v. Schwartz, — So. 2d —, 2006 Miss. LEXIS 268 (Miss. May 18, 2006), opinion withdrawn by 2006 Miss. LEXIS 565 (Miss. Aug. 24, 2006), substituted opinion at 936 So. 2d 931, 2006 Miss. LEXIS 449 (Miss. 2006).

When the jury returned a verdict which resulted in a compensatory damages award, a punitive damages phase of trial should have automatically proceeded, consistent with the applicable statutory provisions of Miss. Code Ann. § 11-1-65(1). Bradfield v. Schwartz, — So. 2d —, 2006 Miss. LEXIS 268 (Miss. May 18, 2006), opinion withdrawn by 2006 Miss. LEXIS 565 (Miss. Aug. 24, 2006), substituted opinion at 936 So. 2d 931, 2006 Miss. LEXIS 449 (Miss. 2006).

In order for punitive damages to be awarded, the plaintiff must demonstrate a willful or malicious wrong, or a gross, reckless disregard for the rights of others; punitive damages are only appropriate in the most egregious cases. A bank customer was not entitled to punitive damages for a bank teller's fraudulent withdrawal of money from the customer's account where: (1) the bank made prompt restitution; (2) the act complained of was committed solely by a single bank teller; (3) the bank's investigation of the matter was complete, thorough, and proper; and (4) considering the totality of the circumstances, the bank's conduct indicated a thorough attempt to satisfactorily resolve the matter. Wise v. Valley Bank, 861 So. 2d 1029 (Miss. 2003).

A proposed settlement amount of $ 4.4 million (6.5% of defendant's net worth), in an action largely involving compliance with governmental guidelines and not involving terrible personal injuries, was well within any arguable zone of reasonableness. Smith v. Tower Loan of Miss., Inc., 216 F.R.D. 338 (S.D. Miss. 2003).

In borrowers' suit arising from allegedly fraudulent loan transactions, remand was not necessary, because agents were fraudulently joined and the $ 75,000 jurisdictional threshold was met based upon the unspecified claims for punitive damages. Ross v. First Family Fin. Servs., Inc., — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 23212 (N.D. Miss. Aug. 26, 2002).

Punitive damages were properly awarded in a case where two armed bail bondsmen entered a mother's home without a search warrant or other authority looking for her son, who had jumped bail. Milburn v. Vinson, 850 So. 2d 1219 (Miss. Ct. App. 2002).

Trial court did not err in refusing to grant decedent's estate's request for a jury instruction covering punitive damages in a wrongful death suit against a corporation arising out of a car accident, when the evidence did not support a punitive damages instruction in light of the fact that, although the corporation's employee was negligent in the operation of the tractor-trailer, he was not grossly negligent. Choctaw Maid Farms, Inc. v. Hailey, 822 So. 2d 911 (Miss. 2002).

Punitive damages pursuant to Miss. Code Ann. § 11-1-65 (1994) were undivided claims of right with a potentially separable award and collectively exceeded the diversity jurisdiction amount. Remand of action to State court was thus denied. Agnew v. Commercial Credit Corp., — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 15060 (S.D. Miss. July 11, 2002).

2. Breach of contract.

In a case in which a jury awarded a judgment in favor of an insurance company after determining that the insureds had not demonstrated all of the necessary elements of their breach of contract claim by a preponderance of the evidence and the insureds filed a motion for reconsideration of summary judgment denying bad faith punitive damages, substantial evidence supported the jury's determination that the insureds did not prove their breach of contract claim, which also required dismissal of their tortious breach of contract claim. Pursuant to Miss. Code Ann. § 11-1-65, since they were not entitled to compensatory damages, they also were not entitled to punitive damages. Bryant v. Prime Ins. Syndicate, Inc., — F. Supp. 2d —, 2010 U.S. Dist. LEXIS 40976 (S.D. Miss. Apr. 27, 2010).

In an insured's bad faith breach of contract suit against an insurer, the insured's claim for punitive damages under Miss. Code Ann. § 11-1-65(1)(a) was not sent to the jury because the evidence showed that the insurer undertook a proper investigation into the insured's alleged disability before denying extended benefits, and thus, the insurer had not acted with malice, fraud, or gross negligence. Tarver v. Colonial Life & Accident Ins. Co, — F.3d —, 2008 U.S. App. LEXIS 20777 (5th Cir. Sept. 30, 2008).

3. Torts.

There was sufficient evidence to meet the "clear and convincing" standard required for punitive damages under Miss. Code Ann. § 11-1-65 in the employees' intentional tort action against the employer and the court's determination of the employer's net worth at the time of judgment was proper. Franklin Corp. v. Tedford, 18 So. 3d 215 (Miss. 2009).

Applying net worth of the employer at the time of trial in a workmans' compensation case relating to intentional conduct of the employer, the circuit court properly reduced an award of punitive damages, pursuant to Miss. Code Ann. § 11-1-65(3)(a)(v). Franklin Corp. v. Tedford, — So. 3d —, 2009 Miss. LEXIS 169 (Miss. Apr. 16, 2009), opinion withdrawn by, substituted opinion at 18 So. 3d 215, 2009 Miss. LEXIS 426 (Miss. 2009).

In a products liability action alleging three welding rod manufacturers' failure to warn, the court denied the manufacturers' postverdict motion for judgment as a matter of law under Fed. R. Civ. P. 50(b) with respect to the $1.7 million in punitive damages awarded by the jury to the professional welder under Miss. Code Ann. 11-1-65; the jury was presented with evidence regarding what the manufacturers knew about the hazard of brain damage caused by manganese toxicity from welding fume exposure, when they knew it, what they did and did not do to investigate it, what actions they took and language they used to warn about it, and when, what the ongoing state of scientific knowledge was about it, and what standards were set by government and industry. All of these factors were relevant to the question of punitive damages, and the evidence presented showed that none of these factors was so weighty that it immunized the manufacturers from a jury finding that they acted with a willful, wanton, or reckless disregard for the safety of others; considering all of the evidence in the light and with all reasonable inferences most favorable to the professional welder, a reasonable jury could have concluded there was sufficient evidence to support an award of punitive damages. Jowers v. BOC Group, Inc., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 28806 (S.D. Miss. Apr. 1, 2009), vacated in part by 617 F.3d 346, 2010 U.S. App. LEXIS 17862 (5th Cir. Miss. 2010).

In a products liability action alleging three welding rod manufacturers' failure to warn, the court denied the manufacturers' postverdict motion for judgment as a matter of law under Fed. R. Civ. P. 50(b) with respect to the $1.7 million in punitive damages awarded by the jury to the professional welder under Miss. Code Ann. 11-1-65 because the manufacturers provided no warning regarding the hazard of the brain injury the professional welder suffered despite substantial evidence of their knowledge that exposure to welding fumes could cause brain damage. Jowers v. BOC Group, Inc., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 28806 (S.D. Miss. Apr. 1, 2009), vacated in part by 617 F.3d 346, 2010 U.S. App. LEXIS 17862 (5th Cir. Miss. 2010).

Where a married couple, in their products liability action against three welding rod manufacturers, advanced a valid justification for the award of attorneys' fees that was widely recognized and accepted by courts applying Mississippi law: i.e., the manufacturer's acted with gross negligence which evidences a willful, wanton or reckless disregard for the safety of others pursuant to Miss. Code Ann. § 11-1-65(1)(a), and the proofs presented at trial provided a sufficient basis for a reasonable jury to conclude, by clear and convincing evidence, that the manufacturers were liable for punitive damages, the district court exercised its discretion to grant the married couple's motion under Fed. R. Civ. P. 54(d) for an attorney's fee award. Jowers v. BOC Group, Inc., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 28806 (S.D. Miss. Apr. 1, 2009), vacated in part by 617 F.3d 346, 2010 U.S. App. LEXIS 17862 (5th Cir. Miss. 2010).

Because the finding that appellee operated the parties' company with gross negligence, evidencing a willful, wanton, or reckless disregard for the financial security of the company, was supported by substantial evidence, the chancellor did not err by awarding appellant punitive damages based on appellee's operation of the company; appellee admitted that he used the company's funds for his personal expenses and for the expenses of his other two businesses, and the court-appointed accountant and the chancellor found that the company's financial records were not properly maintained and were in poor condition. Griffith v. Griffith, 997 So. 2d 218 (Miss. Ct. App. 2008).

In a medical malpractice and wrongful death case, where there was no evidence that the doctor demonstrated a wilful or

malicious wrong or a gross and reckless disregard for the rights of others, an award of punitive damages was improper. Further, punitive damages should not have automatically been submitted to the jury by the trial court; rather, a jury should only be permitted to consider punitive damages if the trial judge determines, under the totality of the circumstances and in light of the defendant's conduct, that a reasonable, hypothetical juror could have identified either malice or gross disregard for the rights of others. Causey v. Sanders, 998 So. 2d 393 (Miss. 2008).

In an action in which a beneficiary filed suit against an insurance company alleging claims of tortious breach of contract, breach of fiduciary duty and duty of good faith and fair dealing, negligence, gross negligence, and intentional infliction of emotional distress, the insurance company was granted summary judgment where: (1) the insured executed a voluntary statement to police that her husband had stabbed her with a knife and a month after the knife wound, the insured died in her bed; (2) no reasonable juror could conclude that the insurance company acted with malice, gross negligence, or reckless disregard in wanting to review the autopsy report; and (3) the delay in receiving the autopsy report was due in part to the beneficiary's failure to inform them of his address change. Washington v. Am. Heritage Life Ins. Co., 500 F. Supp. 2d 610 (N.D. Miss. 2007).

In a debtor's conversion action against a bank, the trial court erred in denying the bank's motion for JNOV as to punitive damages as the only evidence that remotely approached one of the statutory requirements was a bank employee's alleged out-of-court statement regarding his intention to put the debtor out of business. This self-serving hearsay statement was not clear and convincing evidence of actual malice, gross negligence, or the commission of actual fraud. Cmty. Bank v. Courtney, 884 So. 2d 767 (Miss. 2004).

In a property owner's trespass suit against a construction company which removed trees from his property, the trial court did not err in refusing to submit the issue of punitive damages to the jury as the evidence showed that the company thought the property in question belonged to the neighbor (who hired the company) and did not reenter the property once it was aware of the trespass. Teasley v. Buford, 876 So. 2d 1070 (Miss. Ct. App. 2004).

Award of punitive damages in favor of the borrower in the borrower's action for conversion was improper under Miss. Code Ann. § 11-1-65 because there was insufficient evidence to support a jury charge on that issue. A self-serving hearsay statement by a bank employee that he was going to put the borrower out of business was in no way clear and convincing evidence of actual malice, gross negligence, or the commission of actual fraud. Cmty. Bank v. Courtney, — So. 2d —, 2004 Miss. LEXIS 656 (Miss. June 10, 2004), opinion withdrawn by, substituted opinion at, remanded by 884 So. 2d 767, 2004 Miss. LEXIS 1321 (Miss. 2004).

Once a jury returned a verdict in a customer's favor on a claim sounding in conversion, it was the appropriate time to consider the issue of an unresolved claim for punitive damages under Miss. Code Ann. § 11-1-65(1)(c). Brown v. N. Jackson Nissan, Inc., 856 So. 2d 692 (Miss. Ct. App. 2003).

Even assuming that a trial court erred when it failed to take up punitive damages without any further prompting from a customer after a jury awarded damages on a claim sounding in conversion, the customer waived his right to complain by not raising the issue while the jury was still empaneled. Brown v. N. Jackson Nissan, Inc., 856 So. 2d 692 (Miss. Ct. App. 2003).

Trial court did not commit plain error when it failed to proceed on punitive damages after a jury returned a verdict of actual damages on a customer's claim sounding in conversion; the customer had no fundamental right to a possible assessment of punitive damages because he had already been made whole by the verdict for actual damages. Brown v. N. Jackson Nissan, Inc., 856 So. 2d 692 (Miss. Ct. App. 2003).

Employee admitted to not following the store policy regarding shoplifters, ignored the policy, followed the guest from the

store on her own initiative, accused the guest of shoplifting, and committed the tort of assault by grabbing the guest by her underwear; because there was no proof that the store had any knowledge of prior incidents committed by the employee and the employee was acting on her own initiative, pursuant to Miss. Code Ann. § 11-1-65(1)(a), punitive damages against the store should not have been allowed and the appellate court reversed and rendered the punitive damages assessed against the store. Gamble v. Dollar Gen. Corp., 852 So. 2d 5 (Miss. 2003).

In a products liability case, the trial court did not err in refusing to submit the punitive damages issue to the jury because there was no clear and convincing evidence of malice or gross negligence. Mack Trucks, Inc. v. Tackett, 841 So. 2d 1107 (Miss. 2003).

Where there was no evidence that a new employer had the intent to harm a former employer by hiring a performer that was under contract, the issue of punitive damages should not have been submitted to the jury in a tortious interference with contractual relations case. Neider v. Franklin, 844 So. 2d 433 (Miss. 2003).

In a mother's suit against a camp counselor and his employer, based on the mother's claim that her child had been sexually assaulted by the counselor, the trial court properly refused to give a punitive damages instruction; the counselor was not acting within the scope of his employment at the time of the assault, the employer did not benefit from the assault, the jury did not find that the employer knew of the counselor's homosexual tendencies, and a reasonable jury could not find malice, gross neglect, or reckless disregard by the employer. Doe v. Salvation Army, 835 So. 2d 76 (Miss. 2003).

In the absence of any proof that commercial lenders regularly maintained a system of cross-referencing loans and the bank's prospective purchases, the failure to institute that system was not reckless or gross behavior warranting punitive damages; thus, the award of punitive damages was improper and the Supreme Court reversed and rendered the award. AmSouth Bank v. Gupta, 838 So. 2d 205 (Miss. 2002).

Remittitur was ordered in a case involving an employer's bad faith failure to pay worker's compensation benefits because the punitive damages awarded were excessive where the evidence did not show that the employer's conduct met the required degree of reprehensibility under Miss. Code Ann. § 11-1-65(1)(a). Miss. Power & Light Co. v. Cook, 832 So. 2d 474 (Miss. 2002).

In an automobile accident case, plaintiff was not entitled to punitive damages under Miss. Code Ann. § 11-1-65 law where facts showed defendant did not run stop sign, did not fail to check vehicle's speed, tried to take evasive action to avoid accident, had not consumed alcohol, and did not leave the scene of the accident; defendants' conduct did not amount to gross negligence and accordingly, defendants were entitled to partial summary judgment on the issue of punitive damages. Terrell v. W.S. Thomas Trucking, Inc., — F. Supp. 2d —, 2001 U.S. Dist. LEXIS 25455 (N.D. Miss. Mar. 6, 2001).

4. Availability.

Insureds were not entitled to punitive damages because an insurer did not breach its contract of insurance or deny coverage in bad faith for two underlying lawsuits. Mitchell v. State Farm Fire & Cas. Co., — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 69777 (N.D. Miss. June 29, 2011).

Facts established by the record did not support the imposition of punitive damages becuase the facts known to, or reasonably knowable by defendant prior to the time the borrower was finally deposed, did not support a reasonable finding that defendant lacked a legitimate or arguable reason for its position, or that it had breached its duty to conduct a reasonable investigation. Peoples Bank of the S. v. Bancinsure, Inc., — F. Supp. 2d —, 2010 U.S. Dist. LEXIS 116176 (S.D. Miss. Nov. 1, 2010).

Where punitive damages were not available under Miss. Code Ann. § 11-1-54(1)(a) in a personal injury suit based on a vehicular collision because the driver's conduct amounted to only simple negligence in failing to operate a vehicle in a safe manner and maintain a proper lookout, but it did not constitute willful or wanton disregard for the safety of others,

such damages were also unavailable against the driver's employer on a theory of vicarious liability. Dawson v. Burnette, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 62579 (S.D. Miss. July 20, 2009).

Punitive damages were not available under Miss. Code Ann. § 11-1-54(1)(a) in a personal injury suit based on a vehicular collision because defendants' conduct amounted to only simple negligence in failing to operate a vehicle in a safe manner and maintain a proper lookout, but it did not constitute willful or wanton disregard for the safety of others. Dawson v. Burnette, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 62579 (S.D. Miss. July 20, 2009).

Insured was not entitled to punitive damages under Miss. Code Ann. § 11-1-65 for an insurer's alleged bad faith delay in commencing a claims investigation because the terms of the policy at issue required the insured to survive for 180 days after his accident before becoming eligible for disability benefits, and the insurer commenced the investigation at end of the 180-day period, evidencing no willful, wanton, or fraudulent conduct by the insurer. Barnes v. Stonebridge Life Ins. Co., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 21623 (S.D. Miss. Mar. 17, 2009).

In an easement dispute, punitive damages were properly awarded under Miss. Code Ann. § 11-1-65(1)(a) where a commercial property owner removed a sign with a blow torch, engaged in harassment, demanded payment for parking and signage covered under the easement, installed parking bumpers, and erected a fence on neighboring property. Warren v. Derivaux, 996 So. 2d 729 (Miss. 2008).

Casino patron's Miss Code Ann. § 11-1-65 claim for punitive damages in connection with injuries she allegedly sustained when a cocktail waitress dropped a tray of drinks on or near the patron, while attempting to serve another customer, failed because there was no evidence that the waitress acted with gross negligence when she dropped the tray after the customer unexpectedly and excitedly threw up her hands after winning a poker game. Callender v. Imperial Palace of Miss., LLC, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 71292 (S.D. Miss. Sept. 19, 2008).

After a guardianship account was drained, the wards prevailed in their suit against the bank for breaching its duty by allowing the funds on deposit to be converted without a court order. Because the evidence established that the bank was not grossly negligent and did not engage in fraud or intentional misconduct, the chancery court erred in awarding punitive damages against the bank under Miss. Code Ann. § 11-1-65. Williams v. Duckett (In re Duckett), 991 So. 2d 1165 (Miss. 2008).

Under Miss. Code Ann. § 11-1-65, the issue of whether two insureds were entitled to punitive damages should not have been sent to the jury because the insureds did not show that their homeowner's insurer acted with actual malice in processing their claim, and the insurer had an arguable basis for denying the insureds' claim, as evidence showed that the home was destroyed by flooding, a peril that was excluded from coverage; the insurer reasonably relied on a valid and enforceable anti-concurrent causation clause in denying coverage; and the insurer extensively investigated the insureds' claim to determine whether the destruction of the home was caused by flooding or by hurricane winds, which was a covered peril. Broussard v. State Farm Fire & Cas. Co., 523 F.3d 618 (5th Cir. 2008).

Under Miss. Code Ann. § 11-1-65, punitive damages should not have been awarded against a homeowner's insurer in two insureds' suit to recover policy proceeds and damages for bad faith; although the insurer advanced an unsuccessful legal position regarding the allocations of burdens of proof, it was not liable for punitive damages for advancing a legal argument over a disputed issue. Broussard v. State Farm Fire & Cas. Co., 523 F.3d 618 (5th Cir. 2008).

Under Miss. Code Ann. § 11-1-65, punitive damages should not have been awarded against a homeowner's insurer in two insureds' suit to recover policy proceeds and damages for bad faith; although the insurer withheld payment after its expert opined that some of the damage to the insureds' home was caused by wind, a peril that was covered under the policy, the insurer had advanced $

2,000 to the insureds within 10 days after the destruction of the home, and the insureds had a two percent deductible, the combined sums of which may have been adeqaute to cover the damages caused by wind. Broussard v. State Farm Fire & Cas. Co., 523 F.3d 618 (5th Cir. 2008).

Employee was not entitled to punitive damages under Miss. Code Ann. § 11-1-65 as to his claim that an insurer and its management company acted in bad faith in waiting four months to approve surgery for the employee's work-related injury because (1) the evidence showed that the employee caused the delay by refusing to release his medical records and by making misstatements about his prior related injuries; (2) the management company was entitled to investigate whether the prior injuries contributed to the current injury for purposes of determining coverage; and (3) the management company did not violate the 48-hour rule in § IV(A)(1) of the Utilization Management Guidelines of the Official Mississippi Uniform Worker's Compensation Fee Schedule because it approved the surgery within 2 days of receiving all of the information necessary to make the coverage decision. McLendon v. Wal-Mart Stores, Inc., 521 F. Supp. 2d 561 (S.D. Miss. 2007).

Lessees were properly awarded punitive damages where the landman stopped production of the well and after only a few months had passed, contrary to the interest of the lease and the lessees' interest, the landman contacted the landowner to negotiate and obtain a new lease for the well, and upon the execution of a new lease the landman resumed production from the well; the lessees claimed that they were never informed that the well was to be shut down by the landman. Gill v. Gipson, 982 So. 2d 415 (Miss. Ct. App. 2007), writ of certiorari denied by 981 So. 2d 298, 2008 Miss. LEXIS 238 (Miss. 2008).

Because an insured failed to prove that she suffered damages as a direct and proximate result of any reasonable reliance on any perceived negligent misrepresentation by an insurer and its agent, she could not prevail on her claim of negligent misrepresentation, nor was she entitled to a jury's award of punitive damages pursuant to Miss. Code Ann. § 11-1-65(c). Horace Mann Life Ins. Co. v. Nunaley, 960 So. 2d 455 (Miss. 2007).

It was not clear whether the court should have submitted the question of punitive damages to the jury before discovery was completed in a case involving the alleged forgery of a divorcee's signature by her former husband on vehicle lease and purchase agreements since the court could not determine from the summary judgment evidence whether the divorcee had established the elements for an award of punitive damages set forth in Miss. Code Ann. § 11-1-65(1)(d) against the dealership. Dowdy v. Palmer, — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 3176 (S.D. Miss. Jan. 19, 2006).

Because the customer, in his action against the dealership for breach of contract, fraud, and infliction of emotional distress, failed to present evidence of compensatory damages, it was impossible to consider punitive damages under Miss. Code Ann. § 11-1-65. Sumler v. East Ford, Inc., 915 So. 2d 1081 (Miss. Ct. App. 2005).

5. Bifurcated trials.

In a suit in which two insureds alleged that they were owed proceeds under two property insurance policies and were also seeking punitive damages for the insurer's alleged bad faith and delays in payment, a bifurcated trial was ordered to be held in accordance with Miss. Code Ann. § 11-1-65. Letoha v. Nationwide Mut. Ins. Co., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 30865 (S.D. Miss. Feb. 28, 2008).

In a case involving a dispute over claimed insurance coverage, the court granted the insurer's request for a bifurcated trial, in accordance with Miss. Code Ann. § 11-1-65, ruling that the issue of punitive damages would be tried separately from other issues in the case, such as coverage, liability, and actual damages. Fowler v. State Farm Fire & Cas. Co., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 63312 (S.D. Miss. July 25, 2008).

6. Bifurcated claims.

Although a jury ruled in favor of an insured in a dispute over policy proceeds for the loss of the insured's home due to fire, the court did not send the insured's punitive damages claim to the jury as the

insured did meet the standard under Miss. Code Ann. § 11-1-65 of showing that the insurer acted with malice, fraud, or gross negligence in denying the claim where the insurer suspected that the insured had committed arson, thus causing the loss of the home. GuideOne Ins. Co. v. Bridges, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 16035 (S.D. Miss. Mar. 2, 2009).

In insureds' suit asserting claims for breach of insurance policies and bad faith with regard to payment of the insureds' property damage claims related to Hurricane Katrina, bifurcation of the insureds' coverage and punitive damages claims was appropriate under Miss. Code Ann. § 11-1-65; however, because it was difficult to consider the issues of coverage and breach of contract without some information regarding the claims handling process, some evidence about that process would be allowed. Ross v. Metro. Prop. & Cas. Ins. Co., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 81114 (S.D. Miss. Aug. 25, 2008).

7. Burden of proof.

Award of punitive damages was improper because, by instructing the jury that it could award punitive damages pursuant to a preponderance-of-evidence standard, the circuit court's instruction relaxed the necessary burden of proof and in turn, it committed a clear error of law under Miss. Code Ann. § 11-1-65(1)(a). AmFed Cos., LLC v. Jordan, 34 So. 3d 1177 (Miss. Ct. App. 2009).

RESEARCH REFERENCES

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§ 11-1-66. Immunity of premise owners from civil liability in certain circumstances.

No owner, occupant, lessee or managing agent of property shall be liable for the death or injury of an independent contractor or the independent contractor's employees resulting from dangers of which the contractor knew or reasonably should have known.

SOURCES: Laws, 2002, 3rd Ex Sess, ch. 4, § 7; Laws, 2004, 1st ex. Sess., ch. 1, § 5, eff from and after September 1, 2004, and applicable to all causes of action filed on or after September 1, 2004.

Amendment Notes — The 2004 amendment, 1st Ex Sess, ch. 1, rewrote the section.

§ 11-1-67. Authority to sue traders in firearms reserved to state.

(1) The authority to bring an action against any firearms or ammunition manufacturer, distributor or dealer duly licensed under federal law on behalf of any governmental entity created by or pursuant to an act of the Mississippi Legislature or the Mississippi Constitution of 1890, or any department, agency or authority thereof, for damages, abatement, injunctive relief or any other relief or remedy resulting from or relating to the lawful design, manufacture, distribution or sale of firearms, firearm components, silencers, ammunition or ammunition components to the public, shall be exclusively reserved to the state. This section shall not prohibit a political subdivision from bringing an action against a firearm or ammunition manufacturer, distributor or dealer for breach of contract or warranty as to firearms or ammunition purchased by the political subdivision, or for injuries resulting from a firearm malfunction due to defects in materials or workmanship.

(2) "Political subdivision" and "governmental entity" shall have the meanings ascribed in Section 11-46-1.

SOURCES: Laws, 2002, 3rd Ex Sess, ch. 4, § 9, eff from and after Jan. 1, 2003.

§ 11-1-69. Prohibition of hedonic damages in civil actions.

(1) In any civil action for personal injury there may be a recovery for pain and suffering and loss of enjoyment of life. However, there shall be no recovery for loss of enjoyment of life as a separate element of damages apart from pain and suffering damages, and there shall be no instruction given to the jury which separates loss of enjoyment of life from pain and suffering. The determination of the existence and extent of recovery for pain and suffering and loss of enjoyment of life shall be a question for the finder of fact, subject to appellate review, and the monetary value of the pain and suffering and loss of enjoyment of life shall not be made the subject of expert testimony.

(2) In any wrongful death action, there shall be no recovery for loss of enjoyment of life caused by death.

SOURCES: Laws, 2002, 3rd Ex Sess, ch. 4, § 10, eff from and after Jan. 1, 2003.

JUDICIAL DECISIONS

3. Damages not hedonistic.

In a personal injury products liability lawsuit, an award of damages to the decedent's estate was not inflammatory or in violation of Miss. Code Ann. § 11-1-69(2) because, considering the actual damages and the testimony of the decedent's mother as to the family's loss of society and companionship of a young son and brother on the verge of manhood, and the pain and suffering that he must have experienced between the time of the tire's rupture when he was alive and when the rolling automobile stopped against a tree and he was dead, the jury's award was proper. There was evidence to support the damages, and the jury award to the estate was not based upon hedonic damages. Goodyear Tire & Rubber Co. v. Kirby, 2009 Miss. App. LEXIS 221 (Miss. Ct. App. Apr.

21, 2009), appeal dismissed by, writ of certiorari dismissed by 36 So. 3d 455, 2010 Miss. LEXIS 327 (Miss. 2010).

RESEARCH REFERENCES

Law Reviews. Checking Up On the Medical Malpractice Liability Insurance Crisis in Mississippi: Are Additional Tort Reforms the Cure?, 73 Miss. L.J. 1001 (2004).

Now Open for Business: The Transformation of Mississippi's Legal Climate, 24 Miss. C. L. Rev. 393, Spring, 2005.

§ 11-1-71. Immunity of medical personnel who provide volunteer service in school programs.

(1) Any licensed physician, certified nurse practitioner, psychologist or physician assistant who voluntarily provides needed medical or health services to any program at an accredited school in the state without the expectation of payment shall be immune from liability for any civil action arising out of the provision of such medical or health services provided in good faith on a charitable basis. This section shall not extend immunity to willful acts or gross negligence. Except in cases of rendering emergency care wherein the provisions of Section 73-25-37, Mississippi Code of 1972, apply, immunity under this section shall be extended only if the physician, certified nurse practitioner, psychologist or physician assistant and patient execute a written waiver in advance of the rendering of such medical services specifying that such services are provided without the expectation of payment and that the licensed physician or certified nurse practitioner, psychologist or physician assistant shall be immune as provided herein.

(2) Any physician who voluntarily renders any medical service under a special volunteer medical license authorized under Section 73-25-18 without any payment or compensation or the expectation or promise of any payment or compensation shall be immune from liability for any civil action arising out of any act or omission resulting from the rendering of the medical service unless the act or omission was the result of the physician's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written or oral agreement for the physician to provide a voluntary noncompensated medical service before the rendering of the service by the physician.

SOURCES: Laws, 2002, 3rd Ex Sess, ch. 2, § 11, eff from and after Jan. 1, 2003.

RESEARCH REFERENCES

Law Reviews. Checking Up On the Medical Malpractice Liability Insurance Crisis in Mississippi: Are Additional Tort Reforms the Cure?, 73 Miss. L.J. 1001 (2004).

CHAPTER 3

Practice and Procedure in Supreme Court

SEC.
11-3-23 and 11-3-25. Repealed

§ 11-3-15. Effect of dismissal.

JUDICIAL DECISIONS

2. Applicability.

In a case in which (1) 29 days after the judgment of divorce was entered, the husband filed a timely notice of appeal and the appeal was ultimately dismissed for want of prosecution after he failed to file a timely brief; (2) the husband filed a motion in the chancery court to aside, alter, or amend the judgment of divorce; (3) the chancery court denied the motion; and (4) the husband appealed that decision, the wife unsuccessfully argued that appellate jurisdiction was precluded under Miss. Code Ann. § 11-3-15. The present appeal was not a successive appeal from the judgment of divorce; it arose from the husband's motion to set aside the judgment of divorce as void. Cobb v. Cobb, 29 So. 3d 145 (Miss. Ct. App. 2010).

§§ 11-3-23 and 11-3-25. Repealed.

Repealed by Laws, 2002, 3rd Ex Sess, ch. 4, § 14, eff from and after passage (approved January 1, 2003).

11-3-23. [Codes, Hutchinson's 1848, ch. 63, class 4, art. 2 (152); 1857, ch. 63, art. 12; 1871, § 414; 1880, § 1422; 1892, § 4360; 1906, § 4926; Hemingway's 1917, § 3202; 1930, § 3387; 1942, § 1971; Laws, 1977, ch. 446; Laws, 1978, ch. 335, § 3; Laws, 1980, ch. 533, § 1, eff from and after July 1, 1980.]

11-3-25. [Codes, 1880, § 1423; 1892, § 4361; 1906, § 4927; Hemingway's 1917, § 3203; 1930, § 3388; 1942, § 1972.]

Editor's Note — Former § 11-3-23 set a procedure for computation in judgments for damages.

Former § 11-3-25 established a procedure for cases where amount in controversy is not specified.

§ 11-3-37. Appellant not entitled to reversal for error as to another.

JUDICIAL DECISIONS

2. Specific applications.

In a wrongful death action, the misjoinder of nursing home licensees and administrators did not in any way prejudice a parent company of the nursing home; licensees and administrators owed a duty to their employer, and as such the parties could have been called by the decedent's estate to provide relevant testimony, and the record demonstrated that all of the licensees and administrators did not testify, and those who did said little that

advanced the case against the parent company. Mariner Health Care, Inc. v. Estate of Edwards, 964 So. 2d 1138 (Miss. 2007).

CHAPTER 5

Practice and Procedure in Chancery Courts

GENERAL PROVISIONS

SEC.

§ 11-5-1. Venue of suits.

JUDICIAL DECISIONS

1. In general.

Where plaintiff sued the Mississippi Attorney General to obtain discovery from him for use in an administrative proceeding, as the suit was against him in his official capacity, and under Miss. Const. art. 4, § 101, the seat of state government was in Hinds County, venue was proper there, not in Rankin County, where he lived. Moore v. Bell Chevrolet-Pontiac-Buick-GMC, LLC, 864 So. 2d 939 (Miss. 2004).

3. Other suits involving real or personal property.

Where the insurer alleged that the insured committed insurance fraud, the insured's assertion that it was an in personam action, with venue in the county where the insured resided, was rejected; the specific terms of Miss. Code Ann. § 11-5-1 regarding venue for real and personal property actions, prevailed over the general terms of Miss. Code Ann. § 11-11-3, which placed venue generally in the county of the defendant's residence, thus, venue was properly in the county of the insurer's office where the certificates were issued, and from where the claims were paid. Guice v. Miss. Life Ins. Co., 836 So. 2d 756 (Miss. 2003).

5. Venue where defendant resides or is found.

Decision by chancery court in Walthall County that reversed Medicaid's decision denying a claimant nursing home benefits was reversed on appeal, where venue was improper in Walthall County; venue was proper in Hinds County, the seat of state government. Office of the Governor Div. of Medicaid v. Johnson, 950 So. 2d 1033 (Miss. Ct. App. 2006).

§ 11-5-49. Answer not required in certain cases.

In proceedings in matters testamentary and of administration, in minors' business, and in cases of persons with an intellectual disability, persons with mental illness and persons of unsound mind, as provided for by law, no answer

shall be required to any petition or application of any sort. Such a petition or application shall not be taken as confessed because of the lack of an answer, but every petition, application, or account shall be supported by the proper evidence and may be contested without an answer. All such proceedings shall be as summary, as the statutes authorizing and regulating them contemplate; however, when either of the parties having a controversy in court as to any of those several matters requires and the court sees proper, it may direct plenary proceedings by bill or petition, to which there shall be an answer on oath or affirmation. If an adult or sane party refuses to answer as to any matter alleged in the bill or petition and proper for the court to decide upon, the party refusing may be attached, fined, and imprisoned at the discretion of the court, and the matter set forth in the bill or petition shall be taken as confessed and a decree shall be made accordingly.

SOURCES: Codes, 1860, § 1863; 1892, § 523; 1906, § 574; Hemingway's 1917, § 334; 1930, § 370; 1942, § 1281; Laws, 2008, ch. 442, § 4; Laws, 2010, ch. 476, § 4, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2008 amendment substituted "persons with mental retardation, persons with mental illness" for "idiocy, lunacy" in the first sentence; inserted "shall" following "and a decree" near the end; and made minor stylistic changes throughout.

The 2010 amendment substituted "persons with an intellectual disability" for "persons with mental retardation" in the first sentence.

§ 11-5-75. Creditors may attack fraudulent conveyances.

The chancery court shall have jurisdiction of causes of action filed under the Uniform Fraudulent Transfer Act. Upon such a complaint, a writ of sequestration or injunction, or both, may be issued upon like terms and conditions as such writs may be issued in other cases, and subject to such proceedings and provisions thereafter as are applicable in other cases of such writs; and the chancellor of the proper district shall have power and authority to grant orders for receivers, in same manner as if the creditor had recovered judgment and had execution returned "no property found." The creditor in such case shall have a lien upon the property described therein from the filing of his complaint, except as against bona fide purchasers before the service of process upon the defendant in the complaint.

SOURCES: Codes, 1880, §§ 1843, 1844, 1845; 1892, § 503; 1906, § 553; Hemingway's 1917, § 1313; 1930, § 407; 1942, § 1327; Laws, 1898, ch. 64; Laws, 2006, ch. 371, § 12, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment, in the first sentence, substituted "causes of action filed under the Uniform Fraudulent Transfer Act" for "bills exhibited by creditors who have not obtained judgments at law or having judgments, have not had executions returned unsatisfied whether their debts be due or not to set aside fraudulent conveyances of property or other devices resorted to for the purpose of hindering delaying or defrauding creditors; and may subject the property to the satisfaction of the demands of such creditors as if complainants had judgments and

execution thereon returned 'no property found'"; and substituted "complaint" for "bill" throughout the section.

Cross References — Fraudulent transfers and conveyances, see §§ 15-3-101 et seq.

§ 11-5-81. Fieri facias or garnishment on decrees for money.

JUDICIAL DECISIONS

1. Remedies.

In a marital dissolution action, an order restricting the wife's right to pursue enforcement of a judgment against the husband was rendered void because the order operated as a violation of the wife's rights as set forth in the statute; the chancellor did not have the authority to restrict the wife's rights to seek satisfaction of the judgment in the manner reflected in the statute. Jenkins v. Jenkins, 60 So. 3d 198 (Miss. Ct. App. 2011).

§ 11-5-93. Sales of realty under decrees.

JUDICIAL DECISIONS

2. Notice.

In a partition action, the chancellor's award of attorney's fees payable by the appealing parties, and assessed against the sale proceeds, was error, as there was no evidence that said fees were reasonable and there was no bad faith shown. Further, as to notice of the sale, Miss. Code Ann. § 13-3-163 did not apply where the chancellor gave specific instruction for terms of the sale pursuant to Miss. Code Ann. §§ 11-5-93 and 11-5-95, and while the sale price was low, the chancellor did not abuse his discretion in refusing to set aside the sale. Necaise v. Ladner, 910 So. 2d 699 (Miss. Ct. App. 2005).

§ 11-5-95. Court may fix terms of sale.

JUDICIAL DECISIONS

1. In general.

In a partition action, the chancellor's award of attorney's fees payable by the appealing parties, and assessed against the sale proceeds, was error, as there was no evidence that said fees were reasonable and there was no bad faith shown. Further, as to notice of the sale, Miss. Code Ann. § 13-3-163 did not apply where the chancellor gave specific instruction for terms of the sale pursuant to Miss. Code Ann. §§ 11-5-93 and 11-5-95, and while the sale price was low, the chancellor did not abuse his discretion in refusing to set aside the sale. Necaise v. Ladner, 910 So. 2d 699 (Miss. Ct. App. 2005).

§ 11-5-101. Person making sale not to purchase.

JUDICIAL DECISIONS

1. Purchase by mortgagee's affiliate.

Because a second mortgagee lawfully foreclosed the mortgagor's property under Miss. Code Ann. § 89-1-55 and paid off a primary loan and there was no legal prohibition under Miss. Code Ann. §§ 11-5-101 and 89-1-63 for the mortgagee's affiliate to purchase the property at foreclosure, any rights of the mortgagor in the property were extinguished by the

foreclosure sale. Pepper v. Homesales, Inc., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 16692 (S.D. Miss. Mar. 3, 2009).

§ 11-5-109. Bond to prevent confirmation.

JUDICIAL DECISIONS

2. Effect of failure to require bond.

Where three of four heirs conducted a sale of property which was to be auctioned to the hightest bidder for cash, and the fourth heir was the highest bidder, the State Supreme Court held that Miss. Code Ann. § 11-5-109 did not apply and the fourth heir was not required to post a bond. Hataway v. Estate of Nicholls, 893 So. 2d 1054 (Miss. 2005).

§ 11-5-113. Provisions applicable to all sales made by order or decree of the court.

All the provisions of this chapter on the subject of sales shall apply to all sales of real estate under any decree in the chancery court made in matters testamentary and of administration, minors' business, cases of persons with an intellectual disability, persons with mental illness and persons of unsound mind, of partition, and all other matters.

SOURCES: Codes, 1857, ch. 62, art. 59; 1871, § 1038; 1880, § 1959; 1892, § 608; 1906, § 658; Hemingway's 1917, § 420; 1930, § 467; 1942, § 1387; Laws, 2008, ch. 442, § 5; Laws, 2010, ch. 476, § 5, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2008 amendment substituted "persons with mental retardation, persons with mental illness" for "idiocy and lunacy."

The 2010 amendment substituted "persons with an intellectual disability" for "persons with mental retardation."

§ 11-5-117. Private sales authorized.

(1) In addition to the law now in force authorizing the chancery court to decree the sale of land and personal property, the chancery court and the chancellor in vacation are authorized in all matters providing for a sale or lease of real and personal property, including matters testamentary and of administration, minors' business, persons with mental illness, partition and receivers, to order or decree the sale or lease of real and personal property or any interest in the property, including timber, oil, gas and minerals, at private sale, under such terms and conditions as the chancellor may impose. If all of the terms of sale are made certain by the order or decree, a deed or lease executed in full compliance with the order or decree shall become immediately effective without further confirmation by the court or chancellor.

(2) This section shall not be construed to invalidate any proceedings previously done in conformity with this section.

SOURCES: Codes, 1930, § 469; 1942, § 1389; Laws, 1930, ch. 42; Laws, 1936, ch. 327; Laws, 1956, ch. 224, §§ 1-3; Laws, 2008, ch. 442, § 6, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment divided the former single sentence in (1) into two sentences by substituting "impose. If all" for "impose; and if all"; in the first sentence, substituted "persons with mental illness" for "lunacy" and "interest in the property" for "interest therein"; in the second sentence, substituted "full compliance with the order or decree" for "full compliance therewith"; and in (2), substituted "proceedings done in conformity with this section" for "proceedings heretofore had in conformity herewith."

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